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OF
NEBRASKA

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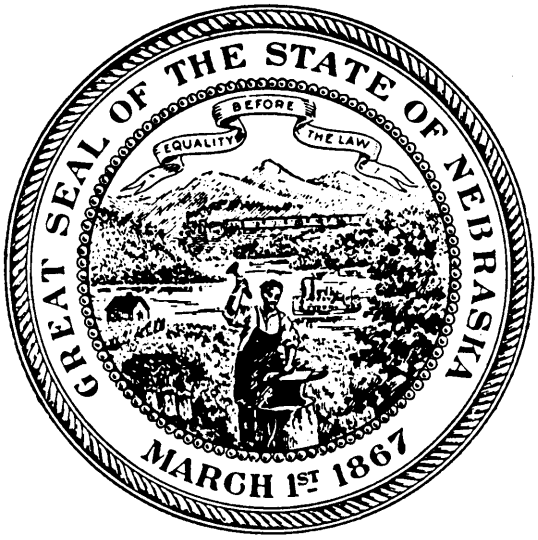
COMPRISING ALL THE STATUTORY LAWS OF A
GENERAL NATURE IN FORCE AT DATE OF
PUBLICATION ON THE SUBJECTS ASSIGNED
TO CHAPTERS 16 TO 23, INCLUSIVE



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CERTIFICATE OF AUTHENTICATION

I, Joanne M. Pepperl, Revisor of Statutes, do hereby certify that the Reissue of Volume 1A of the Revised Statutes of Nebraska, 2007, contains all of the laws set forth in Chapters 16 to 23, appearing in Volume 1A, Revised Statutes of Nebraska, 1997, as amended and supplemented by the Ninety-fifth Legislature, Second Session, 1998, through the One Hundredth Legislature, First Session, 2007, of the Nebraska Legislature, in force at the time of publication hereof.

Joanne M. Pepperl
Revisor of Statutes

Lincoln, Nebraska
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CHAPTER 16
CITIES OF THE FIRST CLASS

Article.

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ARTICLE 1

INCORPORATION, EXTENSIONS, ADDITIONS, WARDS

Section
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16-101 Cities of the first class, defined; population required.

All cities having more than five thousand and not more than one hundred thousand inhabitants, as may be ascertained and officially promulgated by the United States or under the authority of the State of Nebraska or by the authority of the mayor and city council of any such city, shall be known as cities of the first class. The population of a city of the first class shall consist of the people residing within the territorial boundaries of such city and the residents of any territory duly and properly annexed to such city.

Source: Laws 1901, c. 18, § 1, p. 226; R.S.1913, § 4804; C.S.1922, § 3972; C.S.1929, § 16-101; R.S.1943, § 16-101; Laws 1965, c. 85, § 3, p. 328; Laws 1993, LB 726, § 5.

Where the population of city of first class as shown by the last ten-year United States census drops below population of a city of such classification, it becomes automatically a city of second class. State ex rel. Cashman v. Carmean, 138 Neb. 819, 295 N.W. 801 (1941).

A city of the first class that adopts a ''home rule'' charter is a creature of law, and its corporate acts are governed by this chapter. Falldorf v. City of Grand Island, 138 Neb. 212, 292 N.W. 598 (1940).

Provisions of the charter for a city of the first class appear in this chapter. City of Fremont v. Lea, 115 Neb. 565, 213 N.W. 820 (1927).

Classification of cities is constitutional. State ex rel. Jones v. Graham, 16 Neb. 74, 19 N.W. 470 (1884).

City is estopped to defend against waterworks bonds in hands of innocent purchasers where such bonds reflect city certified in bond that they were legally issued, it having plenary power so to do, though the bonds cited the wrong statutory section as authority therefor. City of Beatrice v. Edminson, 117 F. 427 (8th Cir. 1902).

16-102 City of the second class; attainment of required population; incorporation as city of the first class.

Whenever any city of the second class attains a population of more than five thousand inhabitants as provided by section 16-101, the mayor of such city shall certify such fact to the Secretary of State who upon the filing of such certificate shall by proclamation declare such city to be a city of the first class. Upon such proclamation being made by the Secretary of State, every officer of such cities shall within thirty days thereafter qualify and give bond as provided by sections 16-219, 16-304, and 16-318.

Source: Laws 1901, c. 18, § 2, p. 227; R.S.1913, § 4805; C.S.1922, § 3973; C.S.1929, § 16-102; R.S.1943, § 16-102; Laws 1984, LB 1119, § 1.

16-103 Reorganization as city of the first class; transitional provisions.

(1) After the proclamation under section 16-102, the city shall be governed by the laws of this state applicable to cities of the first class, except that the government of such city shall continue as organized at the date of such proclamation until the reorganization as a city of the first class.

(2) The mayor and council members of the city of the second class shall be deemed to be the mayor and council members of the city of the first class on the date the proclamation is issued. All ordinances, bylaws, acts, rules, regulations, obligations, and proclamations existing and in force in or with respect to the city of the second class at the time of its incorporation as a city of the first class shall remain in full force and effect after such incorporation until repealed or modified by the city within one year after the date of the filing of the certificate pursuant to section 16-102.

(3) For the purpose of electing city officials under the provisions of law relating to cities of the first class, the terms of office for such officials shall be established by the city's governing body so as to conform with the intent and purpose of section 32-534.

Source: Laws 1901, c. 18, § 3, p. 227; R.S.1913, § 4806; C.S.1922, § 3974; C.S.1929, § 16-103; R.S.1943, § 16-103; Laws 1984, LB 1119, § 2; Laws 1990, LB 957, § 1; Laws 1994, LB 76, § 482.

16-104 Wards; election districts; staggering of terms; procedure.

If a city of the second class becomes a city of the first class, the mayor and council shall divide the city into not less than three wards, as compact in form and equal in population as may be, the boundaries of which shall be defined by ordinance, to take effect at the next annual city election after reorganization except as provided in section 32-553. Each ward shall constitute an election district, except that when any ward has over five hundred legal voters, the mayor and council may divide such ward into two or more election districts. If it is necessary to establish the staggering of terms by nominating and electing council members for terms of different durations at the same elections, the candidates receiving the greatest number of votes shall be nominated and have their names placed on the general election ballot.

Source: Laws 1901, c. 18, § 9, p. 231; R.S.1913, § 4807; C.S.1922, § 3975; C.S.1929, § 16-104; R.S.1943, § 16-104; Laws 1980, LB 629, § 1; Laws 1983, LB 308, § 1; Laws 1990, LB 957, § 2; Laws 1994, LB 76, § 483; Laws 2002, LB 970, § 1.

16-105 Wards; election precincts.

Precinct lines in any part of any county not under township organization, embraced within the corporate limits of such city, shall correspond with the ward lines of the city, and such precinct shall correspond in number with the ward of the city and be coextensive with the same; *Provided,* when a ward is divided into election districts, the precinct corresponding with such ward shall be divided so as to correspond with the election districts.

Source: Laws 1901, c. 18, § 10, p. 231; R.S.1913, § 4808; C.S.1922, § 3976; C.S.1929, § 16-105; R.S.1943, § 16-105; Laws 1972, LB 1032, § 101.

Provision to substitute municipal courts, in justice of peace districts, is unconstitutional. State ex rel. Woolsey v. Morgan, 138 Neb. 635, 294 N.W. 436 (1940).

Under prior act, county boards could exercise only such powers as were expressly conferred and could not include several wards of a city, with the land adjoining, in one precinct. Morton v. Carlin, 51 Neb. 202, 70 N.W. 966 (1897).

A decision in a former suit, prosecuted years after the bonds were sold, in which suit, neither the purchaser nor his privy were parties, deciding that the precinct issuing them was illegally organized, and that the bonds were void, is not controlling authority, in a suit to collect on such bonds, where the proper authorities at the time of the issuance, certified such bonds were legally issued. Clapp v. Otoe County, 104 F. 473 (8th Cir. 1900).

16-106 Repealed. Laws 1967, c. 64, § 5.

16-107 Repealed. Laws 1967, c. 64, § 5.

16-108 Repealed. Laws 1967, c. 64, § 5.

16-109 Repealed. Laws 1967, c. 64, § 5.

16-110 Repealed. Laws 1967, c. 64, § 5; Laws 1967, c. 65, § 1.

16-110.01 Repealed. Laws 1967, c. 64, § 5.

16-111 Repealed. Laws 1967, c. 64, § 5.

16-112 Transferred to section 19-916.

16-113 Transferred to section 19-917.

16-114 Transferred to section 19-918.

16-114.01 Transferred to section 19-919.

16-114.02 Transferred to section 19-920.

16-114.03 Transferred to section 19-921.

16-115 Corporate name and seal; service of process.

The corporate name of each city of the first class shall be the City of ....., and all process whatever affecting any such city shall be served in the manner provided for service of a summons in a civil action. The city shall procure and keep a seal with such emblem and device as it may think proper. Such seal may be either an engraved or ink stamp seal. It shall have included thereon the City of ....., together with date of incorporation, which shall be the seal of the city, and no other seal shall be used by the city. The impression or representation of the seal by stamp shall be sufficient sealing in all cases where sealing is required. An impression or representation of such seal shall be filed in the office of the Secretary of State, together with a resolution of the city council that the same has been duly adopted and is the seal of said city.

Source: Laws 1901, c. 18, § 122, p. 305; R.S.1913, § 4815; C.S.1922, § 3983; C.S.1929, § 16-112; R.S.1943, § 16-115; Laws 1983, LB 447, § 5.

Provisions for service of process on city officers as herein provided must yield to section 48-813 where jurisdiction of Court of Industrial Relations is invoked. Communication Workers of America, AFL-CIO v. City of Hastings, 198 Neb. 668, 254 N.W.2d 695 (1977).

16-116 Incorporation as city of the first class; applicability of existing law.

All ordinances, bylaws, acts, regulations, rules and proclamations, existing and in force in any city at the time of its incorporation as a city of the first

class, shall remain in full force and effect after such incorporation until the same are repealed or modified by such city.

Source: Laws 1901, c. 18, § 122, p. 305; R.S.1913, § 4815; C.S.1922, § 3983; C.S.1929, § 16-112.

Natural gas ordinance of second-class city remained in force at time it became a first-class city. Nebraska Natural Gas Co. v. City of Lexington, 167 Neb. 413, 93 N.W.2d 179 (1958).

16-117 Annexation; powers; procedure; hearing.

(1) Except as provided in sections 13-1111 to 13-1120 and subject to this section, the mayor and city council of a city of the first class may by ordinance at any time include within the corporate limits of such city any contiguous or adjacent lands, lots, tracts, streets, or highways as are urban or suburban in character and in such direction as may be deemed proper. Such grant of power shall not be construed as conferring power upon the mayor and city council to extend the limits of a city of the first class over any agricultural lands which are rural in character.

(2) The invalidity of the annexation of any tract of land in one ordinance shall not affect the validity of the remaining tracts of land which are annexed by the ordinance and which otherwise conform to state law.

(3) The city council proposing to annex land under the authority of this section shall first adopt both a resolution stating that the city is proposing the annexation of the land and a plan for extending city services to the land. The resolution shall state:

(a) The time, date, and location of the public hearing required by subsection (5) of this section;

(b) A description of the boundaries of the land proposed for annexation; and

(c) That the plan of the city for the extension of city services to the land proposed for annexation is available for inspection during regular business hours in the office of the city clerk.

(4) The plan adopted by the city council shall contain sufficient detail to provide a reasonable person with a full and complete understanding of the proposal for extending city services to the land proposed for annexation. The plan shall (a) state the estimated cost impact of providing the services to such land, (b) state the method by which the city plans to finance the extension of services to the land and how any services already provided to the land will be maintained, (c) include a timetable for extending services to the land proposed for annexation, and (d) include a map drawn to scale clearly delineating the land proposed for annexation, the current boundaries of the city, the proposed boundaries of the city after the annexation, and the general land-use pattern in the land proposed for annexation.

(5) A public hearing on the proposed annexation shall be held within sixty days following the adoption of the resolution proposing to annex land to allow the city council to receive testimony from interested persons. The city council may recess the hearing, for good cause, to a time and date specified at the hearing.

(6) A copy of the resolution providing for the public hearing shall be published in the official newspaper in the city at least once not less than ten days preceding the date of the public hearing. A map drawn to scale delineating

the land proposed for annexation shall be published with the resolution. A copy of the resolution providing for the public hearing shall be sent by first-class mail following its passage to the school board of any school district in the land proposed for annexation.

(7) Any owner of property contiguous or adjacent to a city of the first class may by petition request that such property be included within the corporate limits of such city. The mayor and city council may include such property within the corporate limits of the city without complying with subsections (3) through (6) of this section.

(8) Notwithstanding the requirements of this section, the mayor and city council are not required to approve any petition requesting annexation or any resolution or ordinance proposing to annex land pursuant to this section.

Source: Laws 1967, c. 64, § 1, p. 213; Laws 1989, LB 421, § 1; Laws 2007, LB11, § 1.

1. Character of land
2. Statute of limitations
3. Miscellaneous

1. Character of land

The use of land for agricultural purposes is not dispositive of the character of the land, nor does it mean it is rural in character. It is the nature of its location as well as its use which determines whether it is rural or urban in character. Swedlund v. City of Hastings, 243 Neb 607, 501 N.W.2d 302 (1993).

A city of the first class may annex land contiguous to its corporate limits which is urban or suburban, including segments of highway, as determined by the characteristic of the land adjacent to that being annexed. Piester v. City of North Platte, 198 Neb. 220, 252 N.W.2d 159 (1977).

Under this section, a city of the first class may annex contiguous urban or suburban lands which are not agricultural lands rural in character. Webber v. City of Scottsbluff, 187 Neb. 282, 188 N.W.2d 814 (1971).

Agricultural lands which are urban not rural in character may be annexed. Voss v. City of Grand Island, 186 Neb. 232, 182 N.W.2d 427 (1970).

Section does not require legislative body to conduct trial-type evidentiary hearing or make express finding on character of land. Meyer v. City of Grand Island, 184 Neb. 657, 171 N.W.2d 242 (1969).

Words ''as are urban or suburban in character'' used in this section are not so vague and indefinite as to violate due process clause of the Constitution. Plumfield Nurseries, Inc. v. Dodge County, 184 Neb. 346, 167 N.W.2d 560 (1969).

The character of a segment of an interstate highway sought to be annexed by a city of the first class is determined by the characteristic of the land immediately adjacent to the segment sought to be annexed. Adam v. City of Hastings, 12 Neb. App. 98, 668 N.W.2d 272 (2003).

2. Statute of limitations

An action to enjoin a school district or part thereof, consequent upon annexation of territory by a city of the first class, is barred by the statute of limitations unless brought within one year from effective date of annexation ordinance. School Dist. No. 127 of Lincoln County v. Simpson, 191 Neb. 164, 214 N.W.2d 251 (1974).

3. Miscellaneous

A city of the first class has no power to annex territory which is not contiguous or adjacent. Doolittle v. County of Lincoln, 191 Neb. 159, 214 N.W.2d 248 (1974).

City could not annex strategic air command base where its sole purpose was to increase city's revenue. United States v. City of Bellevue, 474 F.2d 473 (8th Cir. 1973).

United States had no standing to contest validity of city's annexation of alleged agricultural lands not owned and in which it had no interest, though but for such annexation lands of United States would not be lands contiguous to city, subject to annexation as such. United States v. City of Bellevue, 334 F.Supp. 881 (D. Neb. 1971).

16-118 Annexation of land; deemed contiguous; when.

Lands, lots, tracts, streets, or highways shall be deemed contiguous although a stream, embankment, strip, or parcel of land not more than two hundred feet wide lies between the same and the corporate limits.

Source: Laws 1967, c. 64, § 2, p. 214.

Although this section states that lands, lots, tracts, streets, or highways shall be deemed contiguous although a stream, embankment, strip, or parcel of land not more than 200 feet wide lies between the same and corporate limits, this section implies a situation where a strip of land is located parallel to the city limits. Johnson v. City of Hastings, 241 Neb. 291, 488 N.W.2d 20 (1992).

A city of the first class may annex land contiguous to its corporate limits which is urban or suburban, including segments of highway, as determined by the characteristic of the land adjacent to that being annexed. Piester v. City of North Platte, 198 Neb. 220, 252 N.W.2d 159 (1977).

An action to enjoin a school district or part thereof, consequent upon annexation of territory by a city of the first class, is barred by the statute of limitations unless brought within one year from effective date of annexation ordinance. School Dist. No. 127 of Lincoln County v. Simpson, 191 Neb. 164, 214 N.W.2d 251 (1974).

Territory purportedly annexed was not contiguous or adjacent as it was separated from city boundary by river over two

hundred feet wide. Doolittle v. County of Lincoln, 191 Neb. 159, 214 N.W.2d 248 (1974).

The character of a segment of an interstate highway sought to be annexed by a city of the first class is determined by the characteristic of the land immediately adjacent to the segment sought to be annexed. Adam v. City of Hastings, 12 Neb. App. 98, 668 N.W.2d 272 (2003).

16-119 Annexation; extraterritorial property use; continuation.

Any extraterritorial property use regulations imposed upon any annexed lands by the city before such annexation shall continue in full force and effect until otherwise changed.

Source: Laws 1967, c. 64, § 3, p. 214.

16-120 Annexation; inhabitants; services; when.

The inhabitants of territories annexed to such city shall receive substantially the services of other inhabitants of such city as soon as practicable. Adequate plans and necessary city council action to furnish such services shall be adopted not later than one year after the date of annexation, and such inhabitants shall be subject to the ordinances and regulations of such city, except that the one-year period shall be tolled pending final court decision in any court action to contest such annexation.

Source: Laws 1967, c. 64, § 4, p. 214; Laws 1989, LB 421, § 2.

This section requires a city to furnish city services to newly annexed areas within 1 year after annexation. In re Application of City of Grand Island, 247 Neb. 446, 527 N.W.2d 864 (1995).

Requirement of this section that benefits of annexation be furnished as soon as practicable after annexation meets requirements of due process. Plumfield Nurseries, Inc. v. Dodge County, 184 Neb. 346, 167 N.W.2d 560 (1969).

Where not impossible for city to provide services within one year, action contesting annexation on ground of such alleged inability was premature. United States v. City of Bellevue, 334 F.Supp. 881 (D. Neb. 1971).

16-121 Annexation; validation.

Whenever a city of the first class lawfully reannexes territory which it had formerly annexed but which annexation was illegal because the statutes under which such original annexation was made were unconstitutional and void, (1) all contracts for public improvements, warrants and bonds issued by the city of the first class with respect to such territory and all payments made thereon shall thereby be validated, binding and legal upon such city of the first class in the same manner and with the same effect as if the original annexation had been lawful, (2) all obligations of any sanitary and improvement district assumed by a city of the first class with respect to such territory shall thereby be validated, binding and legal upon such city of the first class in the same manner and with the same effect as if the original annexation had been lawful, and (3) such city of the first class may issue bonds under the appropriate statutes relating to public improvements to refund the warrants, warrant interest and any unpaid cost with respect to public improvements referred to in subdivision (1) of this section in the same manner and with the same effect as if the original annexation had been lawful.

Source: Laws 1967, c. 61, § 1, p 209.

United States had no standing to contest validity of former annexation of land not owned. United States v. City of Bellevue, 334 F.Supp. 881 (D. Neb. 1971).

16-122 Annexation of city of the second class or village; conditions.

In addition to existing annexation powers, the mayor and council of any city of the first class may by ordinance annex any village or second-class city which is entirely surrounded by such city, if the following conditions exist:

(1) The city has water mains adjacent to the village or second-class city which are available for extension into and have capacity to serve the village or second-class city;

(2) The city has sanitary sewer lines adjacent to the village or second-class city which are available for extension into and have capacity to serve the village or second-class city;

(3) The city has water and sewer treatment facilities which have the capacity to serve the village or second-class city; and

(4) The city has police, fire, and snow removal facilities which have the capacity to serve the village or second-class city. In determining whether a village or second-class city is entirely surrounded by a city for annexation purposes, any land adjacent to the village or second-class city which is legally immune from annexation by either the city or the village, or second-class city, shall not be considered if the village or second-class city is otherwise surrounded by the city.

Source: Laws 1969, c. 72, § 1, p. 394.

The requirement that the annexing city have sewer treatment facilities with capacity to serve the city annexed was to insure the residents of the annexed city sewer treatment service. City of Parkview v. City of Grand Island, 188 Neb. 267, 196 N.W.2d 197 (1972).

16-123 Annexation; powers; when restricted.

Notwithstanding the powers granted by section 16-122, no village or city of the second class may be annexed by a city of the first class when such village or city of the second class has its own sewage disposal plant, sewage disposal system, water well, water tower, water distribution system, and electrical distribution system or contracts for such services and facilities with an entity or entities other than such city of the first class.

Source: Laws 1969, c. 72, § 2, p. 395.

16-124 Annexation; succession to property, contracts, obligations, and choses in action.

Whenever any city of the first class shall extend its boundaries so as to annex any village or second-class city, the charter, laws, ordinances, powers, and government of such city of the first class shall at once extend over the territory embraced within any village or second-class city so annexed. Such city of the first class shall succeed to all the property and property rights of every kind, contracts, obligations, and choses in action of every kind held by or belonging to the village or second-class city so annexed; and it shall be liable for and assume and carry out all valid contracts, obligations, franchises, and licenses of any such village or second-class city so annexed; *Provided,* that any obligations incurred by such village or second-class city for water, paving, sewer or sewer treatment purposes, shall remain the obligation of the real property in such village or second-class city as its boundaries existed immediately prior to such annexation. Such village or second-class city so annexed shall be deemed fully compensated by virtue of such annexation and the assumption of its obligations and contracts for all its property and property rights of every kind so acquired.

Source: Laws 1969, c. 72, § 3, p. 395.

16-125 Annexation; assessments, fines, licenses, fees, claims, demands; paid to and collection by city of the first class.

All taxes, assessments, fines, licenses, fees, claims, and demands of every kind assessed or levied against persons or property within any such village or second-class city so annexed, shall be paid to and collected by such city of the first class.

Source: Laws 1969, c. 72, § 4, p. 395.

16-126 Taxes and special assessments; annexation; effect.

All taxes and special assessments which such village or second-class city so annexed was authorized to levy or assess and which are not levied or assessed at the time of such annexation for any kind of public improvements made by it or in process of construction or contracted for, may be levied or assessed by such city of the first class, and such city of the first class shall have power to reassess all special assessments or taxes levied or assessed by any such village or second-class city so annexed, in all cases where such village or second-class city is authorized to make reassessments or relevies of such taxes and assessments.

Source: Laws 1969, c. 72, § 5, p. 395.

16-127 Annexation; pending actions at law or in equity; prosecution and defense by city of the first class.

All actions at law or in equity pending in any court in favor of or against any village or second-class city so annexed at the time such annexation takes effect, shall be prosecuted by or defended by such city of the first class, and all rights of action existing against any village or second-class city so annexed at the time of such annexation or accruing thereafter on account of any transaction had with or under any law or ordinance of such village or second-class city, may be prosecuted against such city of the first class.

Source: Laws 1969, c. 72, § 6, p. 396.

16-128 Annexation; records, books, bonds, funds, and property; property of city of the first class; officers; termination.

All officers of any village or second-class city so annexed having books, papers, records, bonds, funds, effects or property of any kind in their hands or under their control belonging to any such village or second-class city, shall upon taking effect of such annexation deliver the same to the respective officers of such city of the first class as may be by law or ordinance or limitation of such city entitled or authorized to receive the same. Upon such annexation taking effect, the terms and tenure of all offices and officers of any such village or second-class city so annexed shall terminate and entirely cease.

Source: Laws 1969, c. 72, § 7, p. 396.

16-129 Annexation; disconnection; procedure.

Whenever any person or persons owning any real property within and adjacent to the corporate limits of any city of the first class or whenever the owner or owners of any unoccupied territory so situated owning land of not less than twenty acres shall desire to have the same disconnected therefrom, they may file request with the city council, asking that such territory be detached therefrom. The request shall contain the legal description of the property sought to be detached. If the city council determines that the property

meets the requirements of this section and that part or all thereof ought to be detached, it shall by a majority vote of its members order such property detached from the city. A certified copy of such order shall be filed by the city clerk in the office of the register of deeds.

Source: Laws 1971, LB 478, § 2.

ARTICLE 2
GENERAL POWERS

Section
16-201. General powers.
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16-201 General powers.

Each city of the first class shall be a body corporate and politic and shall have power (1) to sue and be sued, (2) to purchase, lease, lease with option to buy, or acquire by gift or devise and to hold real and personal property within or without the limits of the city and real estate sold for taxes for the use of the city in such manner and upon such terms and conditions as may be deemed in the best interests of the city, (3) to sell and convey, exchange, or lease any real or personal property owned by the city, including park land, in such manner and upon such terms and conditions as may be deemed in the best interests of the city, except that real estate owned by the city may be conveyed without consideration to the State of Nebraska for state armory sites or, if acquired for state armory sites, shall be conveyed in the manner strictly as provided in sections 18-1001 to 18-1006, (4) to make all contracts and do all other acts in relation to the property and concerns of the city necessary to the exercise of its corporate powers, and (5) to exercise such other and further powers as may be conferred by law.

Source: Laws 1901, c. 18, § 8, p. 230; R.S.1913, § 4816; C.S.1922, § 3984; C.S.1929, § 16-201; Laws 1935, Spec. Sess., c. 10, § 6, p. 74; Laws 1941, c. 130, § 12, p. 497; C.S.Supp.,1941, § 16-201; R.S.1943, § 16-201; Laws 1963, c. 60, § 1, p. 252; Laws 1965, c. 48, § 1, p. 248; Laws 1971, LB 5, § 1; Laws 1975, LB 150, § 1; Laws 1988, LB 793, § 3.

Where the population of city of first class, as shown by the last United States census, drops below the numerical requirement for such class, it becomes a city of second class. State ex rel. Cashman v. Carmean, 138 Neb. 819, 295 N.W. 801 (1941).

Cities of the first class, which adopt a ''home rule'' charter, possess no power to remit or cancel interest or penalties on special taxes, though such cities have power to sue and be sued, to make contracts and do all acts in relation to property and concerns of the city, necessary to exercise its corporate functions. Falldorf v. City of Grand Island, 138 Neb. 212, 292 N.W. 598 (1940).

City has authority, by ordinance, to make all rules and regulations, not inconsistent with state laws, as are expedient, but council's discretion in such matters must be exercised, in a reasonable and not an arbitrary and discriminating manner. State ex rel. Andruss v. Mayor & Council of City of North Platte, 120 Neb. 413, 233 N.W. 4 (1930).

The city's allowance of a claim will not be set aside by suit of a taxpayer, where the city retains the property, though the manner of entering into said contract was irregular and defective, and where there was no fraud, or lack of consideration. Stickel Lumber Co. v. City of Kearney, 103 Neb. 636, 173 N.W. 595 (1919).

Municipality possesses only such powers as are expressly conferred by statute, or as are necessary to carry into effect the powers enumerated. State ex rel. Ransom v. Irey, 42 Neb. 186, 60 N.W. 601 (1894).

16-202 Real estate; conveyance; how effected; remonstrance; procedure; hearing.

The power to sell and convey any real estate owned by the city, including park land, except real estate used in the operation of public utilities and except real estate for state armory sites for the use of the State of Nebraska as expressly provided in section 16-201, shall be exercised by ordinance directing the conveyance of such real estate and the manner and terms thereof. Notice of such sale and the terms thereof shall be published for three consecutive weeks in a legal newspaper published in or of general circulation in such city immediately after the passage and publication of such ordinance.

If within thirty days after the passage and publication of such ordinance a remonstrance against such sale is signed by registered voters of the city equal in number to thirty percent of the registered voters of the city voting at the last regular municipal election held therein and is filed with the governing body of such city, the property shall not then, nor within one year thereafter, be sold. If the date for filing the remonstrance falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the thirty-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day. Upon the receipt of the remonstrance, the governing body of such city, with the aid and assistance of the election commissioner or county clerk, shall determine the validity and sufficiency of signatures on the remonstrance. The governing body of such city shall deliver the remonstrance to the election commissioner or county clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Upon receipt of the remonstrance, the election commissioner or county clerk shall issue to the governing body a written receipt that the remonstrance is in the custody of the election commissioner or county clerk. The election commissioner or county clerk shall compare the signature of each person signing the remonstrance with the voter registration records to determine if each signer was a registered voter on or before the date on which the remonstrance was filed with the governing body. The election commissioner or county clerk shall also compare the signer's printed name, street and number or voting precinct, and city, village, or post office address with the voter registration records to determine whether the signer was a registered voter. The signature and address shall be presumed to be valid only if the election commissioner or county clerk determines that the printed name, street and number or voting precinct, and city, village, or post office address matches the registration records and that the registration was received on or before the date on which the remonstrance was filed with the governing body. The determinations of the election commissioner or county clerk may be rebutted by any credible evidence which the governing body finds sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping to determine the validity of the remonstrance, the sufficiency of the remonstrance, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the remonstrance process. Upon completion of the comparison of names and addresses with the voter registration records, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the signature page number and line number where the name is found, and if the reason for the invalidity of the signature or address is other than the nonregistration of the signer, the election commissioner or county clerk shall set forth the reason for the invalidity of the signature. If the election commissioner or county clerk determines that a signer has affixed his or her signature more than once to the remonstrance and that only one person is registered by that name, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name of the duplicate signature and shall count only the earliest dated signature. The election commissioner or county clerk shall certify to the governing body the number of valid signatures necessary to constitute a valid remonstrance. The election commissioner or county clerk shall deliver the remonstrance and the certifications to the governing body within forty days after the receipt of the remonstrance from the governing body. The delivery shall be by hand carrier, by use of law enforcement officials, or by

certified mail, return receipt requested. Not more than twenty signatures on one signature page shall be counted.

The governing body shall, within thirty days after the receipt of the remonstrance and certifications from the election commissioner or county clerk, hold a public hearing to review the remonstrance and certifications and receive testimony regarding them. The governing body shall, following the hearing, vote on whether or not the remonstrance is valid and shall uphold the remonstrance if sufficient valid signatures have been received.

Source: Laws 1901, c. 18, § 8, p. 230; R.S.1913, § 4817; C.S.1922, § 3985; C.S.1929, § 16-202; Laws 1935, Spec. Sess., c. 10, § 7, p. 75; Laws 1937, c. 27, § 1, p. 148; Laws 1941, c. 130, § 13, p. 497; C.S.Supp.,1941, § 16-202; R.S.1943, § 16-202; Laws 1963, c. 60, § 2, p. 252; Laws 1988, LB 793, § 4; Laws 1993, LB 59, § 1; Laws 1997, LB 230, § 1.

16-203 Property tax; levy; amount.

A city of the first class may levy taxes for general revenue purposes in any one year, not exceeding forty-two cents on each one hundred dollars upon the taxable value of all the taxable property in the limits of such city. This section shall not be construed so as to affect the limitation on maximum annual levies for all municipal purposes in the city in any one year as set forth in section 16-702.

Source: Laws 1901, c. 18, § 48, I, p. 245; Laws 1901, c. 19, § 3, p. 307; R.S.1913, § 4819; C.S.1922, § 3987; C.S.1929, § 16-204; Laws 1937, c. 28, § 1, p. 150; C.S.Supp.,1941, § 16-204; R.S.1943, § 16-203; Laws 1945, c. 20, § 1, p. 127; Laws 1947, c. 29, § 1, p. 136; Laws 1953, c. 287, § 7, p. 933; Laws 1979, LB 187, § 38; Laws 1992, LB 719A, § 41.

In absence of a limitation in the act granting it authority to issue bonds, the city has power to levy sufficient taxes to pay the same, and a judgment against the city for the amount of the bonds, puts the question of authority to levy the tax to pay such bonds to rest, and mandamus will enforce such levy. United States ex rel. Masslich v. Saunders, 124 F. 124 (8th Cir. 1903).

16-204 Other taxes; power to levy.

A city of the first class may levy any other tax or special assessment authorized by law, and appropriate money and provide for the payment of the debts and expenses of the city.

Source: Laws 1901, c. 18, § 48, II, p. 245; R.S.1913, § 4820; C.S.1922, § 3988; C.S.1929, § 16-205.

While the burden is upon he who denies a lien for general taxes, to prove them void, yet he who seeks to enforce a lien for special taxes, has the burden of proving their validity. Farmer L. & T. Co. v. Hastings, 2 Neb. Unof. 337, 96 N.W. 104 (1902).

In absence of limitation in the act granting it authority to issue bonds, the city has power to levy sufficient taxes to pay the same, and a judgment against the city for the amount of the bonds, puts the question of authority to levy the tax to pay such bonds to rest, and mandamus will enforce such levy. United States ex rel. Masslich v. Saunders, 124 F. 124 (8th Cir. 1903).

16-205 License or occupation tax; power to levy; exceptions.

A city of the first class may raise revenue by levying and collecting a license or occupation tax on any person, partnership, limited liability company, corporation, or business within the limits of the city and to regulate same by ordinance. All such taxes shall be uniform in respect to the class upon which they are imposed. All scientific and literary lectures and entertainments shall be

exempt from such taxation as well as concerts and all other musical entertainments given exclusively by the citizens of the city.

Source: Laws 1901, c. 18, § 48, IX, p. 247; Laws 1907, c. 13, § 1, p. 110; R.S.1913, § 4821; C.S.1922, § 3989; C.S.1929, § 16-206; R.S. 1943, § 16-205; Laws 1993, LB 121, § 135.

City of the first class may impose an excise, license, or occupation tax upon a given class of business, when such tax is definite, reasonable, and uniform. Gooch Food Products Co. v. Rothman, 131 Neb. 523, 268 N.W. 468 (1936).

City by ordinance may levy and collect an occupation tax from a telegraph company though part of its business is interstate, and such tax is not measured by the profits thereof. City of Grand Island v. Postal Telegraph Cable Co., 92 Neb. 253, 138 N.W. 169 (1912).

A property tax, based upon the value of a corporate franchise, and an occupation tax based upon gross earning of such company, are in nowise identical and do not constitute double taxation. Lincoln Traction Co. v. City of Lincoln, 84 Neb. 327, 121 N.W. 435 (1909).

Where a city ordinance imposes an occupation tax, and provides a special means of enforcing it, such method is generally exclusive, and if the only method is illegal, the ordinance as a whole is inoperative as the courts will not substitute a different and legal method of enforcement. City of Omaha v. Harmon, 58 Neb. 339, 78 N.W. 623 (1899).

Under prior act an ordinance for an occupation tax on a telegraph company doing both inter and intrastate business from within the city is valid and will be presumed to be a tax on that part of such business, as is intrastate, unless the act imposes such tax on the gross income. Western Union Telegraph Co. v. City of Fremont, 39 Neb. 692, 58 N.W. 415, 26 L.R.A. 698 (1894).

Statutory provision authorizing cities to levy and collect occupation taxes is not repugnant to the Constitution, and while a provision making it a misdemeanor to conduct business, without first obtaining a license, and declaring a penalty or imprisonment, for such failure, is void, yet so much of the theory as fixes a civil liability is unaffected and valid. Templeton v. City of Tekamah, 32 Neb. 542, 49 N.W. 373 (1891).

The levy and collection of an occupation tax are not repugnant to the terms of the Constitution. Magneau v. City of Fremont, 30 Neb. 843, 47 N.W. 280 (1890), 9 L.R.A. 786 (1890), 27 A.S.R. 436 (1890).

Cities and villages may impose an occupation tax on liquor dealers, but a municipality may not make payment of such tax a condition precedent to the issuance of a license. State ex rel. Sage v. Bennett, 19 Neb. 191, 26 N.W. 714 (1886).

16-206 Dogs and other animals; regulation; license tax; enforcement.

A city of the first class may collect a license tax from the owners and harborers of dogs and other animals in an amount which shall be determined by the governing body of such city and enforce the same by appropriate penalties. Any licensing provision shall comply with subsection (2) of section 54-603 for dog guides, hearing aid dogs, and service dogs. The city may cause the destruction of any dog or other animal, for which the owner or harborer shall refuse or neglect to pay such license tax. It may regulate, license, or prohibit the running at large of dogs and other animals and guard against injuries or annoyances therefrom and authorize the destruction of the same when running at large contrary to the provisions of any ordinance.

Source: Laws 1901, c. 18, § 48, X, p. 247; R.S.1913, § 4822; C.S.1922, § 3990; C.S.1929, § 16-207; R.S.1943, § 16-206; Laws 1959, c. 59, § 1, p. 253; Laws 1971, LB 478, § 1; Laws 1981, LB 501, § 3; Laws 1997, LB 814, § 4.

16-207 Streets and sidewalks; regulation; declaration of nuisance; procedure.

A city of the first class may by ordinance provide for the removal of all obstructions from the sidewalks, curbstones, gutters, and crosswalks at the expense of the owners or occupants of the grounds fronting thereon or at the expense of the person placing the same there and may require and regulate the planting and protection of shade trees in the streets and along the same and the trimming and removing of the same.

A city of the first class may by ordinance declare it to be a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees within the right-of-way of streets within the corporate limits of the city. Notice to abate and remove such nuisance and notice of the right to a hearing and the manner in which it may be requested shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified

mail. Within thirty days after the receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing or fails to comply with the order to abate and remove the nuisance, the city may have such work done and may levy and assess all or any portion of the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed.

The city may also regulate the building of bulkheads, cellars, basements, ways, stairways, railways, windows, doorways, awnings, hitching posts and rails, lampposts, awning posts, and all other structures projecting upon or over any adjoining excavation through and under the sidewalks in the city.

Source: Laws 1901, c. 18, § 48, XI, p. 247; R.S.1913, § 4823; C.S.1922, § 3991; C.S.1929, § 16-208; R.S.1943, § 16-207; Laws 1994, LB 695, § 5.

16-208 Repealed. Laws 1980, LB 741, § 1.

16-209 Transportation of freight; regulation.

A city of the first class by ordinance may regulate the transportation of articles through the streets, and prevent injuries to the streets from overloaded vehicles.

Source: Laws 1901, c. 18, § 48, XIII, p. 248; R.S.1913, § 4825; C.S.1922, § 3993; C.S.1929, § 16-210.

16-210 Streets and sidewalks; use; safety regulations.

A city of the first class may prevent and remove all encroachments into and upon all sidewalks, streets, avenues, alleys, and other city property, and prevent and punish all horseracing, fast driving or riding in the streets, highways, alleys, bridges or places in the city, and all games, practices or amusements therein likely to result in damage to any person or property. It may regulate, prevent, and punish the operation of vehicles or the riding, driving or passing of animals over or upon any streets or sidewalks of the city; regulate and prevent the use of streets, sidewalks, and public grounds for signs, sign posts, awnings, telegraph, telephone or other poles, racks, bulletin boards, and the posting of handbills and advertisements; regulate traffic and sale upon the streets, sidewalks and public places; punish and prohibit cruelty to animals; and regulate and prevent the moving of buildings through or upon the streets.

Source: Laws 1901, c. 18, § 48, XIV, p. 248; R.S.1913, § 4826; C.S.1922, § 3994; C.S.1929, § 16-211; R.S.1943, § 16-210; Laws 1967, c. 67, § 1, p. 219.

Where the Legislature has provided a limitation upon the speed of vehicles, the city, by ordinance, may make further restrictions, if the same are reasonable and made necessary by the circumstances, and such ordinances do not prohibit or restrict the free use of the streets. Christensen v. Tate, 87 Neb. 848, 128 N.W. 622 (1910).

Prior to the enactment of this section in 1901, the fee of the streets was in the city in trust for public use, and such city could not sell or permanently obstruct them, without compensation being paid owners of property specially injured thereby. Omaha & R. V. R. R. Co. v. Rogers, 16 Neb. 117, 19 N.W. 603 (1884); Burlington & M. R. R. Co. v. Reinhackle, 15 Neb. 279, 18 N.W. 69 (1883), 48 Am. R. 342 (1883).

A purchaser of a tract by metes and bounds is not entitled to an injunction to restrain claimant from enclosing an alley, where the addition from which purchaser obtained his tract, was not platted, dedicated nor conveyed to public. Bushman v. Gibson, 15 Neb. 676, 20 N.W. 106 (1884).

Court will not by mandamus compel city to remove building temporarily placed in the street, which placement was reasonable and necessary for the erection of a building upon an adjoining lot, provided, the obstruction was not unreasonably prolonged. State ex rel. Beatty v. City of Omaha, 14 Neb. 265, 15 N.W. 210 (1883), 45 Am. R. 108 (1883).

City is primarily liable for injury, though it has recourse from owner, where owner let a contract for excavation of a sidewalk space, and where by reason of the acts of negligence of the contractor in making such excavation, the plaintiff was injured. Palmer v. City of Lincoln, 5 Neb. 136, 25 Am. R. 470 (1876).

16-211 Railroads; depots; power to regulate.

A city of the first class by ordinance may regulate levees, depots, depot grounds, and places for storing freight and goods, and provide for and regulate the passage of railways through the streets and public grounds of the city, reserving the rights of all persons injured thereby.

Source: Laws 1901, c. 18, § 48, XV, p. 248; R.S.1913, § 4827; C.S.1922, § 3995; C.S.1929, § 16-212.

16-212 Railroads; safety regulations; power to prescribe.

A city of the first class by ordinance may regulate the crossing of railway tracks and provide precautions and prescribe rules regulating the same; regulate the running of railway engines, cars, and trucks within the limits of said city, and prescribe rules relating thereto, and govern the speed thereof; and make other and further provisions, rules, and restrictions to prevent accidents at the crossings and on the tracks of railways, and to prevent fires from engines. It may regulate and prescribe the manner of running street cars, require the heating and cleaning of same, and fix and determine the fare charged; require the lighting of any railways within the city, the cars of which are propelled by steam, in such manner as they shall prescribe, and fix and determine the number, style, and size of the lampposts, burners, lamps, and all other fixtures and apparatus necessary for such lighting, and the points of location for such lampposts; and in case the company owning or operating such railways shall fail to comply with such requirements, the council may cause the same to be done by giving notice of the same and may assess the expense thereof against such company, and the same shall constitute a lien on any real estate belonging to such company, and lying within said city, and may be collected in the same manner as taxes for general purposes. The city may require railroad companies to keep flagmen at all railroad crossings of streets, and provide protection against injury to persons and property in the use of such railroads; compel any railroad to raise or lower their railroad tracks to conform to the general grade, which may at any time be established by such city, and where such tracks run lengthwise through or over any street, alley or highway, to keep the same level with the street surface; compel and require railroad companies to keep open the streets, and to construct and keep in repair ditches, drains, sewers and culverts, along and under their railroad tracks, and to pave their whole right-of-way on all paved streets, and keep the same in repair.

Source: Laws 1901, c. 18, § 48, XVI, p. 249; R.S.1913, § 4828; C.S.1922, § 3996; C.S.1929, § 16-213.

16-213 Money; power to borrow.

A city of the first class may borrow money on the credit of the city and pledge the credit, revenue, and public property of the city for the payment thereof, when authorized in the manner herein provided.

Source: Laws 1901, c. 18, § 48, XVII, p. 249; R.S.1913, § 4829; C.S.1922, § 3997; C.S.1929, § 16-214.

16-214 Bonds; refunding indebtedness; rate of interest.

A city of the first class by ordinance may provide for issuing bonds, for the purpose of funding any and all indebtedness of the city, due or to become due. Floating indebtedness shall be funded only by authority of a vote of the people, but the mayor and council may by a two-thirds vote issue bonds to pay off any bonded debt without a vote of the people.

Source: Laws 1901, c. 18, § 48, XVIII, p. 250; R.S.1913, § 4830; Laws 1919, c. 34, § 1, p. 112; C.S.1922, § 3998; C.S.1929, § 16-215; R.S.1943, § 16-214; Laws 1969, c. 51, § 26, p. 288.

Strict compliance with all the prerequisites of the statute must be shown before mandamus will compel Auditor of Public Accounts to register a bond issue, and where notice of bond election was given for twenty days and statute requires four weeks, such notice is not sufficient. State ex rel. City of Fremont v. Babcock, 25 Neb. 500, 41 N.W. 450 (1889).

16-215 Bonds; sinking fund; authorized; tax to retire bonds.

A city of the first class may make provision for a sinking fund to pay accruing interest and to pay at maturity the principal of the bonded indebtedness of the city, levy and collect taxes on all the taxable property in the city, in addition to other taxes, for the purpose of paying the same, and provide that the tax shall be paid in cash.

Source: Laws 1901, c. 18, § 48, XIX, p. 250; R.S.1913, § 4831; C.S.1922, § 3999; C.S.1929, § 16-216.

16-216 Special elections; authorized; regulation.

A city of the first class may provide for the holding and regulation of special elections, the return and canvass of votes cast thereat, and pay the expenses of the same.

Source: Laws 1901, c. 18, § 48, XXI, p. 250; R.S.1913, § 4832; C.S.1922, § 4000; C.S.1929, § 16-217.

In absence of a limitation in the act granting it authority to issue bonds, the city has power to levy sufficient taxes to pay the same, and a judgment against the city for the amount of the bonds puts the question of authority to levy the tax to pay such bonds to rest, and mandamus will enforce such levy. United States ex rel. Masslich v. Saunders, 124 F. 124 (8th Cir. 1903).

16-217 Officers; removal; vacancies; how filled.

A city of the first class by ordinance may provide for the removal of elective officers of the city for misconduct. The city may create any office that it deems necessary for the good government and interest of the city. The city may provide for filling vacancies which occur in any elective office, except the mayor or member of the city council, by appointment by the mayor with the consent of the council to hold his or her office for the unexpired term. Whenever the city council fails to consent to any appointment made under this section by the mayor by the close of the second regular council meeting following the announcement of the appointment, the vacancy shall be filled by a special election to be held as prescribed by ordinance in the ward in which such vacancy exists. A vacancy in the office of the mayor or on the city council shall be filled as provided in section 32-568.

Source: Laws 1901, c. 18, § 48, XXII, p. 250; R.S.1913, § 4833; C.S.1922, § 4001; C.S.1929, § 16-218; R.S.1943, § 16-217; Laws 1957, c. 55, § 1, p. 266; Laws 1972, LB 1145, § 1; Laws 1980, LB 601, § 1; Laws 1990, LB 853, § 1; Laws 1994, LB 76, § 484.

Where a board has authority to remove an officer for cause, a court will not interfere by injunction, where the board has not acted. Cox v. Moores, 55 Neb. 34, 75 N.W. 35 (1898).

Where statute provides ''for removing officers of the city for misconduct'', the council acting without the mayor, is without power to remove the mayor and such attempted removal is null and void. Stahlhut v. Bauer, 51 Neb. 64, 70 N.W. 496 (1897).

16-218 Officers; regulation.

A city of the first class by ordinance may regulate and prescribe the powers, duties, and compensation of the officers of the city not herein provided for, and classify the several offices and positions of trust or employment in the public service on the basis of merit through such agency as the local governing body shall provide for that purpose, upon approval by a majority of the electors of said city voting on such proposition.

Source: Laws 1901, c. 18, § 48, XXIII, p. 250; R.S.1913, § 4834; C.S. 1922, § 4002; C.S.1929, § 16-219; Laws 1939, c. 11, § 1, p. 78; C.S.Supp.,1941, § 16-219.

16-219 Officers; bonds or insurance; restrictions upon officers as sureties.

A city of the first class by ordinance may require all officers or servants, elected or appointed, to give bond and security or evidence of equivalent insurance for the faithful performance of their duties. No officer shall become surety upon the official bond of another, or upon any contractor's bond, license, or appeal bond given to the city, or under any ordinance thereof, or from conviction in the county court for violation of any ordinance of such city.

Source: Laws 1901, c. 18, § 48, XXIV, p. 250; R.S.1913, § 4835; C.S.1922, § 4003; C.S.1929, § 16-220; R.S.1943, § 16-219; Laws 1972, LB 1032, § 102; Laws 2007, LB347, § 8.

16-220 Officers; reports; required; when.

A city of the first class may require from any officer of the city at any time a report in detail of the transactions in his office or of any matters connected therewith.

Source: Laws 1901, c. 18, § 48, XXV, p. 251; R.S.1913, § 4836; C.S.1922, § 4004; C.S.1929, § 16-221.

16-221 Watercourses; surface waters; regulation.

A city of the first class may establish, alter, and change the channel of watercourses, and wall and cover them over. No city shall be liable in damages on account of the accumulations of surface waters which fall upon its site, or any portion thereof, unless such accumulations be caused by the act of a city officer while employed in his official capacity and by authorization of the mayor and council first entered of record.

Source: Laws 1901, c. 18, § 48, XXVIII, p. 253; Laws 1907, c. 13, § 1, p. 110; R.S.1913, § 4837; C.S.1922, § 4005; C.S.1929, § 16-222.

Courts by injunction will prevent a village from accumulating surface waters upon its site or any portion thereof and discharging it by ditches upon lands of another. Andrews v. Village of Steele City, 2 Neb. Unof. 676, 89 N.W. 739 (1902).

16-222 Fire department; establishment authorized; fire prevention; regulations.

A city of the first class may provide for the organization and support of a fire department; procure fire engines, hooks, ladders, buckets and other apparatus;

organize fire engine, hook and ladder, and bucket companies, and prescribe rules for duty and the government thereof, with such penalties as the council may deem proper, not exceeding one hundred dollars; make all necessary appropriations therefor; and establish regulations for the prevention and extinguishment of fires. It may prescribe limits within which no building shall be constructed except of brick, stone or other incombustible material, with fireproof roof, and impose a penalty for the violation of such ordinance. It may cause the destruction or removal of any building constructed or repaired in violation of such ordinance, and after such limits are established no special permits shall be given for the erection or repairing of buildings of combustible material. It may regulate the construction and inspection of, and order the suppression of and cleaning of fireplaces, chimneys, stoves, stovepipes, ovens, boilers, kettles, forges or any apparatus used in any building, manufactory or business which may be dangerous in causing or promoting fires, and prescribe limits within which dangerous or obnoxious and offensive business may be carried on.

Source: Laws 1901, c. 18, § 48, XXIX, p. 253; R.S.1913, § 4838; C.S.1922, § 4006; C.S.1929, § 16-223.

A city is liable, under the workmen's compensation law, to a fireman injured while attending a firemen's convention with the consent and approval of city authorities. City of Fremont v. Lea, 115 Neb. 565, 213 N.W. 820 (1927).

16-223 Repealed. Laws 1991, LB 356, § 36.

16-224 Fuel and feed; inspection and sale; regulation.

A city of the first class by ordinance may provide for the inspection of electric light, water and gas meters, the inspection and weighing of hay, grain and coal, and the measuring of wood and fuel to be used in the city, and determine the place or places of the same. It may regulate and prescribe the place or places of exposing for sale of hay, coal and wood, provide for the appointment of an inspector, and fix the fees and duties of the inspector and of other persons authorized to perform such duties.

Source: Laws 1901, c. 18, § 48, XXXI, p. 254; Laws 1905, c. 25, § 2, p. 250; R.S.1913, § 4840; C.S.1922, § 4008; C.S.1929, § 16-225.

16-225 Police; regulation; penalties; power to prescribe.

A city of the first class may regulate the police of the city, establish and support a night watch, impose fines, forfeitures, confinement, and penalties for the breach of any ordinance, and for recovery and collection of the same. In default of payment, it may provide for confinement in the city prison or to hard labor in the city, upon the streets or elsewhere, for the benefit of the city.

Source: Laws 1901, c. 18, § 48, XXXII, p. 254; R.S.1913, § 4841; C.S. 1922, § 4009; C.S.1929, § 16-226; R.S.1943, § 16-225; Laws 1965, c. 47, § 1, p. 247.

16-226 Billiard halls; bowling alleys; disorderly houses; gambling; desecration of Sabbath.

A city of the first class by ordinance may regulate, prohibit, and suppress unlicensed tippling shops, billiard tables, and bowling alleys, may restrain houses of prostitution, opium joints, dens, and other disorderly houses and practices, games, gambling houses, desecration of the Sabbath day, commonly

called Sunday, and may prohibit all public amusements, shows, exhibitions, or ordinary business pursuits upon such day, all lotteries, all fraudulent devices and practices for the purpose of obtaining money or property, all shooting galleries, and all kinds of public indecencies, except that nothing in this section shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conducted in accordance with the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act.

Source: Laws 1901, c. 18, § 48, XXXIII, p. 254; R.S.1913, § 4842; C.S. 1922, § 4010; C.S.1929, § 16-227; R.S.1943, § 16-226; Laws 1986, LB 1027, § 188; Laws 1991, LB 849, § 61; Laws 1993, LB 138, § 63.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

Under the terms of a prior act, the Legislature authorized cities to prohibit, or to license, the keeping of billiard and pool tables for hire, and to provide a fine for the violation thereof. In re Langston, 55 Neb. 310, 75 N.W. 828 (1898).

16-227 Riots; disorderly conduct; use of explosives; weapons; vagabonds; lights; bonfires; regulation.

A city of the first class may prevent and restrain riots, routs, noises, disturbances, breach of the peace or disorderly assemblies in any street, house or place in the city; regulate, punish, and prevent the discharge of firearms, rockets, powder, fireworks or any other dangerous combustible material in the streets, lots, grounds, and alleys or about or in the vicinity of any buildings; regulate, prevent, and punish the carrying of concealed weapons; arrest, regulate, punish, fine or set at work on the streets, or elsewhere, all vagabonds and persons found in said city without visible means of support or some legitimate business; regulate and prevent the transportation or storage of gunpowder or other explosive or combustible articles, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitroglycerine, dynamite, petroleum or any other productions thereof, and other materials of like nature, the use of lights in stables, shops or other places, and the building of bonfires; and regulate and prohibit the piling of building material or any excavation or obstruction in the street.

Source: Laws 1901, c. 18, § 48, XXXIV, p. 255; R.S.1913, § 4843; C.S. 1922, § 4011; C.S.1929, § 16-228.

City's delegated power hereunder to control storage of petroleum products must be exercised by ordinance. State ex rel. Andruss v. Mayor & Council of City of North Platte, 120 Neb. 413, 233 N.W. 4 (1930).

16-228 Disturbing the peace; punishment.

A city of the first class by ordinance may provide for the punishment of persons disturbing the peace and good order of the city by clamor and noise, by intoxication, drunkenness, fighting, or using obscene or profane language in the streets or other public places, or otherwise violating the public peace by indecent and disorderly conduct, or by lewd or lascivious behavior.

Source: Laws 1901, c. 18, § 48, XXXV, p. 255; R.S.1913, § 4844; C.S. 1922, § 4012; C.S.1929, § 16-229.

Urinating in public constituted disorderly conduct under ordinance validly enacted pursuant to this section. State v. Cherry, 185 Neb. 103, 173 N.W.2d 887 (1970).

16-229 Vagrants; pickpockets; other offenders; punishment.

A city of the first class by ordinance may provide for the punishment of vagrants, tramps or common street beggars, common prostitutes, habitual disturbers of the peace, pickpockets, gamblers, burglars, thieves, ball game players, persons who practice any game, trick or device with intent to swindle, persons who abuse their families, and suspicious persons who can give no reasonable account of themselves.

Source: Laws 1901, c. 18, § 48, XXXVI, p. 255; R.S.1913, § 4845; C.S. 1922, § 4013; C.S.1929, § 16-230.

16-230 Drainage; nuisance; weeds; litter; removal; notice; action by city council; violation; penalty; civil action.

(1) A city of the first class by ordinance may require lots or pieces of ground within the city or within two miles of the corporate limits of the city to be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon. It may require the owner or occupant of all lots and pieces of ground within the city to keep the lots and pieces of ground and the adjoining streets and alleys free of any growth of twelve inches or more in height of weeds, grasses, or worthless vegetation, and it may prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city.

(2) Any city of the first class may by ordinance declare it to be a nuisance to permit or maintain any growth of twelve inches or more in height of weeds, grasses, or worthless vegetation or to litter or cause litter to be deposited or remain thereon except in proper receptacles.

(3) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating such ordinance, be guilty of a Class V misdemeanor.

(4) Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. If notice by personal service or certified mail is unsuccessful, notice shall be given by publication in a newspaper of general circulation in the city or by conspicuously posting the notice on the lot or ground upon which the nuisance is to be abated and removed. Within five days after receipt of such notice or publication or posting, whichever is applicable, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or fails to comply with the order to abate and remove the nuisance, the city may have such work done. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

(5) For purposes of this section:

(a) Litter includes, but is not limited to: (i) Trash, rubbish, refuse, garbage, paper, rags, and ashes; (ii) wood, plaster, cement, brick, or stone building

rubble; (iii) grass, leaves, and worthless vegetation; (iv) offal and dead animals; and (v) any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk; and

(b) Weeds includes, but is not limited to, bindweed (Convolvulus arvensis), puncture vine (Tribulus terrestris), leafy spurge (Euphorbia esula), Canada thistle (Cirsium arvense), perennial peppergrass (Lepidium draba), Russian knapweed (Centaurea picris), Johnson grass (Sorghum halepense), nodding or musk thistle, quack grass (Agropyron repens), perennial sow thistle (Sonchus arvensis), horse nettle (Solanum carolinense), bull thistle (Cirsium lanceolatum), buckthorn (Rhamnus sp.) (tourn), hemp plant (Cannabis sativa), and ragweed (Ambrosiaceae).

Source: Laws 1901, c. 18, § 48, XXXVII, p. 255; R.S.1913, § 4846; Laws 1915, c. 84, § 1, p. 222; C.S.1922, § 4014; C.S.1929, § 16-231; R.S.1943, § 16-230; Laws 1975, LB 117, § 1; Laws 1988, LB 934, § 2; Laws 1991, LB 330, § 1; Laws 1995, LB 42, § 2; Laws 2004, LB 997, § 1.

City owes no duty to provide drainage for property within its limits, where another due to a change in street grade caused inundation of plaintiff's premises. City of Beatrice v. Knight, 45 Neb. 546, 63 N.W. 838 (1895).

16-231 Health; nuisances; regulation.

A city of the first class may prevent any person from bringing, depositing, having, or leaving upon or near his or her premises or elsewhere in the city or within two miles of the corporate limits of the city any carcass or putrid beef, pork, fish, hides, or skins of any kind or any unwholesome substance and may compel the removal of the same.

Source: Laws 1901, c. 18, § 48, XXXVIII, p. 256; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4847; C.S.1922, § 4015; C.S.1929, § 16-232; R.S.1943, § 16-231; Laws 1988, LB 934, § 3.

City had power to contract for removal of refuse, filth, and garbage from public and private premises, within its limits, and to pay therefor from the miscellaneous fund appropriated for such purposes, though it was impossible to estimate the exact amount required at time the appropriation was made. Kelly v. Broadwell, 3 Neb. Unof. 617, 92 N.W. 643 (1902).

16-232 Excavations; regulation.

A city of the first class by ordinance may prevent the digging of holes, pits or excavations within the city, except for the purpose of building where such excavations are made, prevent the leaving of any holes, pits or excavations within said city in an exposed condition, and require the filling of same.

Source: Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4848; C.S.1922, § 4016; C.S.1929, § 16-233.

16-233 Public buildings; safety regulations; licensing; violations; penalty.

A city of the first class may regulate, license or suppress halls, opera houses, places of amusement, entertainment or instruction, or other buildings except churches and schools used for the assembly of citizens, and cause them to be provided with sufficient and ample means of exit and entrance, and to be supplied with necessary and appropriate appliances for the extinguishment of fire and for escape from such places in case of fire, and prevent overcrowding;

and regulate the placing and use of seats, chairs, benches, scenery, curtains, blinds, screens or other appliances therein. It may provide that for any violation of any such regulation a penalty of two hundred dollars shall be imposed, and upon conviction of any such licensees of any violation of any ordinance regulating such places, the license of any such place shall be revoked by the mayor and council. Whenever the mayor and council shall by resolution declare any such place to be unsafe, the license thereof shall be thereby revoked; and the council may provide that in any case where they have so revoked a license, any owner, proprietor, manager, lessee or person opening, using or permitting such place to be opened or used for any purpose involving the assemblage of more than twelve persons, shall upon conviction thereof be deemed guilty of a misdemeanor, and fined in any sum not exceeding two hundred dollars.

Source: Laws 1901, c. 18, § 48, XXXXIX, p. 256; R.S.1913, § 4849; C.S.1922, § 4017; C.S.1929, § 16-234.

16-234 Building; construction; safety regulations.

A city of the first class by ordinance may prescribe the thickness, strength, and manner of constructing stone, brick, and other buildings, and the number and construction of means of exit and entrance, and of fire escapes. It may require the keeper or proprietor of any hotel, boarding house or dormitory to provide and maintain such kind and such number of ladders, ropes, balconies, stairways, and other appliances as by ordinance may be prescribed to facilitate the escape of persons from any such building in case of fire.

Source: Laws 1901, c. 18, § 48, XL, p. 256; R.S.1913, § 4850; C.S.1922, § 4018; C.S.1929, § 16-235.

16-235 Animals and fowl; running at large; regulation.

A city of the first class may regulate or prohibit the running at large of cattle, hogs, horses, mules, sheep, goats, dogs and other animals, chickens, ducks, geese and other fowls, and cause such as may be running at large to be impounded and sold to discharge the costs and penalties provided for the violation of such prohibitions, and the fees and expenses of impounding and keeping the same, and of such sale.

Source: Laws 1901, c. 18, § 48, XLI, p. 257; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4851; C.S.1922, § 4019; C.S.1929, § 16-236.

16-236 Pounds; erection; keepers.

A city of the first class may provide for the erection of all necessary pens, pounds, and buildings for the use of the city, within or without the city limits, appoint and compensate keepers thereof, and establish and enforce rules governing the same.

Source: Laws 1901, c. 18, § 48, XLII, p. 257; R.S.1913, § 4852; C.S.1922, § 4020; C.S.1929, § 16-237.

16-237 Property; sale at auction; regulation.

A city of the first class by ordinance may regulate, license, or prohibit the sale of domestic animals or of goods, wares, and merchandise at public auction on the streets, alleys, highways, or any public grounds within the city; and regulate or license the auctioneering of goods, wares, domestic animals, and merchan-

dise. If the applicant is an individual, an application for a license shall include the applicant's social security number.

Source: Laws 1901, c. 18, § 48, XLIII, p. 257; R.S.1913, § 4853; C.S. 1922, § 4021; C.S.1929, § 16-238; R.S.1943, § 16-237; Laws 1997, LB 752, § 75.

The right to enact ordinances regulating auction sales within the corporate limits is conferred by this section, but ordinance enacted cannot place arbitrary and unreasonable restrictions on the conduct of lawful business. Webber v. City of Scottsbluff, 141 Neb. 363, 3 N.W.2d 635 (1942).

16-238 Spread of disease; regulation; board of health; creation; powers; duties.

A city of the first class may make regulations to prevent the introduction and spread of contagious, infectious, or malignant diseases into the city. In cities with a commission form of government as provided in Chapter 19, article 4, and cities with a city manager plan of government as provided in Chapter 19, article 6, a board of health shall be created consisting of five members: The mayor, who shall be chairperson, a physician, who shall be medical adviser, the chief of police, who shall be secretary and quarantine officer, and two other members. In all other cities, a board of health shall be created consisting of five members: The mayor, who shall be chairperson, a physician, who shall be medical adviser, the chief of police, who shall be secretary and quarantine officer, the president of the council, and one other member. A majority of such board shall constitute a quorum and shall enact rules and regulations, having the force and effect of law, to safeguard the health of the people of such city and prevent nuisances and unsanitary conditions, enforce the same, and provide fines and punishments for the violation thereof.

Source: Laws 1901, c. 18, § 48, XLIV, p. 257; R.S.1913, § 4854; Laws 1919, c. 37, § 1, p. 118; C.S.1922, § 4022; C.S.1929, § 16-239; R.S.1943, § 16-238; Laws 1977, LB 190, § 1; Laws 1993, LB 119, § 1; Laws 1994, LB 1019, § 1.

16-239 Hospitals; jails; other institutions; erection; regulation.

A city of the first class may erect, establish, and regulate hospitals, workhouses, poorhouses, multiunit housing, houses of correction, jails, station houses, and other necessary buildings and provide for the support and government of the same.

Source: Laws 1901, c. 18, § 48, XLV, p. 257; R.S.1913, § 4855; C.S.1922, § 4023; C.S.1929, § 16-240; R.S.1943, § 16-239; Laws 1992, LB 1240, § 13.

16-240 Health; sanitary regulations.

A city of the first class by ordinance may make regulations to secure the general health of the city, prescribe rules for the prevention, abatement, and removal of nuisances, make and prescribe regulations for the construction, location, and keeping in order of all slaughterhouses, stockyards, warehouses, sheds, stables, barns, dairies, or other places where offensive matter is kept, or is likely to accumulate, within the corporate limits, and to limit or fix the maximum number of swine or neat cattle that may be kept in sheds, stables, barns, feed lots or other enclosures within the city.

Source: Laws 1901, c. 18, § 48, XLVI, p. 257; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4856; Laws 1919, c. 37, § 1, p. 119; C.S.1922, § 4024; C.S.1929, § 16-241.

Ordinance prohibiting keeping classes of livestock within three hundred feet of a residence is constitutional and valid under this section. Beaty v. Baker, 183 Neb. 349, 160 N.W.2d 199 (1968).

City, by ordinance, is authorized to make it unlawful to maintain stockyards within certain limits of city, and such act is not an arbitrary and unreasonable interference with owner's property, though such yards are properly maintained and are not a nuisance. Union Pacific R. R. Co. v. State of Nebraska, 88 Neb. 247, 129 N.W. 290 (1911).

Cities have the power to contract for the removal of refuse, filth, and garbage from public and private premises, within their limits. Kelly v. Broadwell, 3 Neb. Unof. 617, 92 N.W. 643 (1902).

16-241 Cemeteries; acquisition; control.

A city of the first class may purchase, hold, and pay for, in the manner herein provided, lands for the purpose of the burial of the dead, and all necessary grounds for hospital grounds and waterworks, and have and exercise police jurisdiction over the same, and over any cemetery lying near said city and used by the inhabitants thereof.

Source: Laws 1901, c. 18, § 48, XLVII, p. 258; R.S.1913, § 4857; C.S. 1922, § 4025; C.S.1929, § 16-242; R.S.1943, § 16-241; Laws 1973, LB 276, § 1.

Cross References

For additional provisions relating to cemeteries, see Chapter 12.

16-242 Cemeteries; maintenance; funds; how used.

(1) A city of the first class may survey, plat, map, grade, fence, ornament, and otherwise improve all burial and cemetery grounds and avenues leading thereto owned by such city. It may construct walks, rear and protect ornamental trees therein, and provide for paying the expenses thereof.

(2) After the burial and cemetery grounds are fully paid for, the city may set aside the proceeds of the sale of lots as a perpetual fund to be invested as provided by ordinance. The income from the fund shall be used for the care, ornamentation, or maintenance of such lots or the cemetery in general. The principal of the perpetual fund may be used for the purchase and development of additional land to be used for cemetery purposes as long as no more than twenty-five percent of the principal is so used in any fiscal year and no more than thirty-five percent of the principal is so used in any period of ten consecutive fiscal years.

(3) The city may receive money by donation, bequest, or otherwise to be held in trust in perpetuity to be invested as provided by ordinance or conditioned by the donor. The income therefrom shall be used for the care, ornamentation, and maintenance of such property as the donor may designate. The principal therefrom may be used for the purchase and development of additional land to be used for cemetery purposes as the donor may designate as long as no more than twenty-five percent of the principal is so used in any fiscal year and no more than thirty-five percent of the principal is so used in any period of ten consecutive fiscal years.

(4) The city treasurer shall be the custodian of such funds, and the same shall be invested by a board composed of the mayor, city treasurer, and city clerk.

(5) This section does not limit the use of any money that comes to the city by donation, bequest, or otherwise that is not designated to be credited to the perpetual fund or that allows greater use for purchase or development of additional land to be used for cemetery purposes.

Source: Laws 1901, c. 18, § 48, XLVIII, p. 258; Laws 1913, c. 256, § 1, p. 790; R.S.1913, § 4858; C.S.1922, § 4026; C.S.1929, § 16-243; R.S.1943, § 16-242; Laws 2005, LB 262, § 2.

16-243 Cemeteries; lots; how conveyed; title.

A city of the first class may convey cemetery lots owned by such city, by certificates signed by the mayor and countersigned by the clerk under the seal of the city specifying that the person to whom the same is issued is the owner of the lot or lots described therein by number as laid down on such plat or map, for the purpose of interment. Such certificate shall vest in the proprietor, his or her heirs and assigns, a right in fee simple of such lot for the sole purpose of interment, under the regulations of the city council. Such certificates shall be entitled to be recorded in the office of the register of deeds of the proper county without further acknowledgment, and such description of lots shall be deemed and recognized as a sufficient description thereof.

Source: Laws 1901, c. 18, § 48, XLIX, p. 258; R.S.1913, § 4859; C.S.1922, § 4027; C.S.1929, § 16-244.

16-244 Cemeteries; sale of lots; monuments; regulations.

A city of the first class by ordinance may limit the number of cemetery lots which shall be owned by one person at the same time; prescribe rules for enclosing, adorning, and erecting monuments and tombstones on cemetery lots; prohibit any diversion of the use of such lots and any improper adornment thereof; but no religious test shall be made as to the ownership of lots, the burial therein or the ornamentation of graves or lots.

Source: Laws 1901, c. 18, § 48, L, p. 258; R.S.1913, § 4860; C.S.1922, § 4028; C.S.1929, § 16-245.

16-245 Cemeteries; ordinances governing; enforcement.

A city of the first class may pass rules and ordinances imposing penalties and fines not exceeding one hundred dollars, regulating, protecting and governing the cemetery, the owners of lots therein, visitors thereof, and trespassers therein. The officers of such city shall have as full jurisdiction and power in the enforcing of such rules and ordinances as though they related to the city itself.

Source: Laws 1901, c. 18, § 48, LI, p. 258; R.S.1913, § 4861; C.S.1922, § 4029; C.S.1929, § 16-246.

16-246 General ordinances; authorized; jurisdiction.

A city of the first class may make all such ordinances, bylaws, rules, regulations, and resolutions not inconsistent with the general laws of the state as may be necessary or expedient, in addition to the special powers otherwise granted by law, for maintaining the peace, good government, and welfare of the city and its trade, commerce, and manufactures, for preserving order and securing persons or property from violence, danger, and destruction, for protecting public and private property, and for promoting the public health, safety, convenience, comfort, and morals and the general interests and welfare of the inhabitants of the city. It may impose fines, forfeitures, penalties, and imprisonment at hard labor for the violation of any ordinance; provide for the recovery, collection, and enforcement of such fines, forfeitures, or penalties; and, in default of payment, provide for confinement in the city or county prison, workhouse, or other place of confinement with or without hard labor as may be provided by ordinance. The jurisdiction of the city to enforce such

ordinances, bylaws, rules, regulations, and resolutions shall extend over the city and over all places within two miles of the corporate limits of the city.

Source: Laws 1901, c. 18, § 48, LII, p. 259; R.S.1913, § 4862; C.S.1922, § 4030; C.S.1929, § 16-247; R.S.1943, § 16-246; Laws 1965, c. 47, § 2, p. 247; Laws 1965, c. 48, § 2, p. 249; Laws 1988, LB 934, § 4.

City was authorized to enact ordinance for parking meters as a regulatory measure. School District of McCook v. City of McCook, 163 Neb. 817, 81 N.W.2d 224 (1957).

Where there is no building or other existing ordinance that prevents the building of an oil station, and where a few doors from the location where plaintiff wishes to construct such station there is a like station, the passing of an ordinance to prohibit plaintiff from building such station is so unreasonable and discriminatory as to be unconstitutional. Standard Oil Company v. City of Kearney, 106 Neb. 558, 184 N.W. 109 (1921).

16-247 Ordinances; revision; publication.

A city of the first class may revise the ordinances of the city from time to time and publish the same in pamphlet or book form. Such revision shall be by one ordinance, embracing all ordinances preserved as changed or added to and perfected by revision, and shall embrace all the ordinances of every nature preserved, and be a repeal of all ordinances in conflict with such revision; but all ordinances then in force shall continue in force after such revision for the purpose of all rights acquired, fines, penalties, forfeitures, and liabilities incurred, and actions therefor. The only title necessary for such revision and repeal shall be An ordinance to revise all the ordinances of the city of ....., and sections and chapters may be used instead of numbers, and original titles need not be preserved, nor signature of the mayor.

Source: Laws 1901, c. 18, § 48, LIV, p. 259; Laws 1903, c. 19, § 9, p. 240; R.S.1913, § 4863; C.S.1922, § 4031; C.S.1929, § 16-248.

Cross References

For procedure generally in revision of ordinances, see sections 16-403 to 16-405.

16-248 Trees, planting; birds, protection of.

A city of the first class may provide for planting and protection of shade, ornamental, and useful trees and for the protection of birds, their nests and eggs.

Source: Laws 1901, c. 18, § 50, p. 268; R.S.1913, § 4864; C.S.1922, § 4032; C.S.1929, § 16-249.

16-249 Streets, alleys, bridges, and sewers; construction and maintenance.

A city of the first class may provide for the grading, repairing, and sprinkling of any street, avenue or alley, and the construction of bridges, culverts and sewers, and shall defray the repairs of the same out of the proper fund of such city; but no street shall be graded except the same be ordered done by the affirmative vote of two-thirds of the city council. On written petition of not less than one-half the owners of street front of the land fronting on any street or any specified part thereof, the mayor and council may order such street or any specified part thereof to be sprinkled with water at such time or times as the council may deem proper. Such sprinkling shall be done by contract awarded to the lowest responsible bidder in each case, and for the entire city or specified district thereof. To pay the expenses of such sprinkling the council may make special assessments upon the lands abutting upon such street or specified part

thereof either on the valuation thereof, as listed for taxation, or by foot front. Such assessment shall be collected by special taxation.

Source: Laws 1901, c. 18, § 48, III, p. 245; Laws 1909, c. 19, § 1, p. 183; R.S.1913, § 4865; C.S.1922, § 4033; C.S.1929, § 16-250.

City has authority to establish a street grade and to work the streets accordingly, and where there is no evidence that the grade is changed, there being no provisions for payment of damages for injury, no action for damages will lie. Nebraska City v. Lampkin, 6 Neb. 27 (1877).

16-250 Sidewalks; sewers; drains; construction and repair; assessments.

A city of the first class may construct or repair sidewalks, sewers, and drains on any highway in the city and construct or repair iron railings or gratings for areaways, cellars or entrances to basements of buildings, and levy a special tax on lots or parcels of land fronting on such sidewalk, waterway, highway or alley to pay the expense of such improvements, to be assessed as other special assessments. But, unless a majority of the owners of the property subject to assessment for such improvements petition the council to make the same, such improvements shall not be made until three-fourths of all the members of said council, by vote, assent to the making of the same, which vote, by yeas and nays, shall be entered of record.

Source: Laws 1901, c. 18, § 48, VI, p. 246; Laws 1907, c. 13, § 1, p. 110; R.S.1913, § 4866; C.S.1922, § 4034; C.S.1929, § 16-251.

Cross References

Manner of assessment, see section 16-666.

16-251 Libraries and museums; establishment; maintenance.

The mayor and council of any city of the first class shall have power to establish and maintain public libraries, reading rooms, art galleries and museums, and to provide the necessary grounds or buildings therefor; to purchase the papers, books, maps, manuscripts and works of art, and objects of natural or scientific curiosity and instruction therefor; and to receive donations and bequests of money or property for the same in trust or otherwise. They may also pass necessary bylaws and regulations for the protection and government of the same. The ownership of the real and personal property of such library shall be in the city.

Source: Laws 1901, c. 18, § 49, p. 268; Laws 1903, c. 19, § 10, p. 241; R.S.1913, § 4867; C.S.1922, § 4035; C.S.1929, § 16-252.

16-252 County jail; use by city; compensation.

Any city of the first class shall have the right to use the jail of the county for the confinement of such persons as may be imprisoned under the ordinances of such city. The city shall be liable to the county for the cost of keeping such prisoners as provided by section 47-120.

Source: Laws 1901, c. 18, § 95, p. 296; R.S.1913, § 4869; C.S.1922, § 4037; C.S.1929, § 16-254; Laws 1937, c. 85, § 1, p. 282; C.S.Supp.,1941, § 16-254; R.S.1943, § 16-252; Laws 1961, c. 40, § 1, p. 168; Laws 1989, LB 4, § 1.

Cross References

For additional provisions relating to city jails and joint county and city jails, see sections 47-201 to 47-208 and 47-301 to 47-308.

16-253 Mayor and council; supplemental powers; authorized.

When the power is conferred upon the mayor and council of any city of the first class to do and perform any act or thing, and the manner of exercising such power is not specially pointed out, the mayor and council may provide by ordinance the details necessary for the full exercise of such power.

Source: Laws 1901, c. 18, § 120, p. 303; R.S.1913, § 4870; C.S.1922, § 4038; C.S.1929, § 16-255.

Appointment of a board of public works is entirely optional. State ex rel. City of Grand Island v. Union Pacific R. R. Co., 152 Neb. 772, 42 N.W.2d 867 (1950).

This section is grant in nature of police power exercisable for public benefit, supplementing express powers. City of Fremont v. Lea, 115 Neb. 565, 213 N.W. 820 (1927).

16-254 Ordinance; parking lots and shopping centers; regulation; when authorized.

Any city of the first class may by ordinance provide for regulation of traffic, public use and conduct of invitees upon specified parking lots, shopping centers and similar semipublic but privately owned places located within the city limits of such city when the owners or operators of such semipublic places make written request for the same. Such ordinances may provide for regulation of the flow of traffic, speed limits, offenses against the public morals, unlawful assembly, trespass and similar offenses to the same effect and with the same authority as can be done in public thoroughfares, public parking lots and other public places. Such ordinance shall provide penalties within the limits of authority granted to cities of the first class for violation of city ordinances. Nothing in this section shall require the city to furnish labor, material, supervision, personnel or services in connection with the establishment, supervision or enforcement of such ordinance or the maintenance or upkeep of such parking areas.

Source: Laws 1969, c. 71, § 1, p. 393.

16-255 Facilities, programs, and services for elderly persons; authorized.

A city of the first class may plan, initiate, operate, maintain, administer funding for, and evaluate facilities, programs, and services designed to meet the needs of elderly persons. Such city may contract with state agencies, political subdivisions, and private nonprofit agencies to exercise and carry out such powers.

Source: Laws 1991, LB 810, § 1.

ARTICLE 3

OFFICERS, ELECTIONS, EMPLOYEES

Section
16-301. Repealed. Laws 1969, c. 257, § 44.
16-302. Repealed. Laws 1969, c. 257, § 44.
16-302.01. Officers; election; qualifications; term.
16-303. Repealed. Laws 1969, c. 257, § 44.
16-304. Council; members; bond or insurance; payment of premium; amount; conditions.
16-305. Officers and employees; merger of offices or employment; salaries.
16-306. City of the second class; reorganization as city of the first class; council member; continuance in office.
16-307. Repealed. Laws 1994, LB 76, § 615.
16-308. Administrator, departments, and other appointed officers; enumerated; appointment and removal.

Section
16-309. Appointed officers; terms.
16-310. Officers and employees; compensation fixed by ordinance.
16-310.01. Repealed. Laws 1959, c. 266, § 1.
16-311. Officers; qualifications.
16-312. Mayor; powers and duties.
16-313. Mayor; veto power; passage over veto.
16-314. Mayor; legislative recommendations; jurisdiction.
16-315. Repealed. Laws 1994, LB 76, § 615.
16-316. Mayor; pardons; remission of fines.
16-317. City clerk; duties; bond record; annual report.
16-318. City treasurer; bond or insurance; premium; duties; reports.
16-318.01. City clerk; city treasurer; offices combined; duties; salary.
16-319. City attorney; duties; compensation; additional legal assistance.
16-320. City engineer; duties.
16-321. City engineer; public works; prepare estimate of cost; board of public works; powers; contracts; procedure; city council; powers and duties; public emergency.
16-321.01. Municipal bidding procedure; waiver; when.
16-322. Special engineer; when employed.
16-323. Chief of police; police officers; powers and duties.
16-324. Street commissioner; duties.
16-325. Board of public works; appointment; oath; terms; duties; removal from office.
16-326. Elective officers; compensation; change during term prohibited; exception.
16-327. Officers; reports required.
16-328. Transferred to section 19-3501.
16-329. Repealed. Laws 1971, LB 562, § 7.
16-330. Repealed. Laws 1983, LB 237, § 22.
16-331. Repealed. Laws 1983, LB 237, § 22.
16-332. Repealed. Laws 1983, LB 237, § 22.
16-333. Repealed. Laws 1983, LB 237, § 22.
16-334. Repealed. Laws 1983, LB 237, § 22.
16-335. Repealed. Laws 1983, LB 237, § 22.
16-336. Repealed. Laws 1983, LB 237, § 22.
16-336.01. Repealed. Laws 1983, LB 237, § 22.
16-337. Repealed. Laws 1983, LB 237, § 22.

16-301 Repealed. Laws 1969, c. 257, § 44.

16-302 Repealed. Laws 1969, c. 257, § 44.

16-302.01 Officers; election; qualifications; term.

In any city of the first class except any city having adopted the commissioner or city manager plan of government, the mayor and council members shall be registered voters of the city and the council members shall be residents of the ward from which elected if elected by ward and residents of the city if elected at large. The council may also, by a two-thirds vote of its members, provide by ordinance for the election of the treasurer and clerk. All nominations and elections of such officers shall be held as provided in the Election Act.

The terms of office of all such members shall commence on the first regular meeting of the council in December following their election.

Source: Laws 1969, c. 257, § 3, p. 933; Laws 1973, LB 558, § 1; Laws 1975, LB 323, § 1; Laws 1976, LB 688, § 1; Laws 1977, LB 201, § 4; Laws 1979, LB 421, § 2; Laws 1979, LB 80, § 22; Laws 1981, LB 446, § 1; Laws 1982, LB 807, § 41; Laws 1983, LB 308, § 2; Laws 1990, LB 957, § 3; Laws 1990, LB 853, § 2; Laws 1994, LB 76, § 485; Laws 2001, LB 730, § 1.

Cross References

City council, election, see section 32-534.
Election Act, see section 32-101.
Vacancies, see sections 32-568 and 32-569.

16-303 Repealed. Laws 1969, c. 257, § 44.

16-304 Council; members; bond or insurance; payment of premium; amount; conditions.

Each council member, before entering upon the duties of his or her office, shall be required to give bond or evidence of equivalent insurance to the city. The bond shall be with two or more good and sufficient sureties or some responsible surety company. If by two sureties, they shall each justify that he or she is worth at least two thousand dollars over and above all debts and exemptions. Such bonds or evidence of equivalent insurance shall be in the sum of one thousand dollars and shall be conditioned for the faithful discharge of the duties of the council member giving such bond or insurance, and shall be further conditioned that if the council member shall vote for any expenditure or appropriation of money or creation of any liability in excess of the amount allowed by law, such council member, and the sureties signing such bond, shall be liable thereon. The bond shall be filed with the city clerk and approved by the mayor, and upon the approval, the city may pay the premium for such bond. Any liability sought to be incurred, or debt created in excess of the amount limited or authorized by law, shall be taken and held by every court of the state as the joint and several liability and obligation of the council member voting for and the mayor approving such liability, obligation, or debt, and not the debt, liability, or obligation of the city. Voting for or approving of such liability, obligation, or debt shall be conclusive evidence of malfeasance in office for which such council member or mayor may be removed from office.

Source: Laws 1901, c. 18, § 12, p. 232; Laws 1903, c. 19, § 1, p. 232; Laws 1907, c. 13, § 1, p. 106; R.S.1913, § 4872; Laws 1915, c. 85, § 1, p. 223; C.S.1922, § 4040; Laws 1923, c. 67, § 2, p. 202; C.S.1929, § 16-302; R.S.1943, § 16-304; Laws 1965, c. 49, § 1, p. 250; Laws 1979, LB 80, § 23; Laws 2007, LB347, § 9.

16-305 Officers and employees; merger of offices or employment; salaries.

All officers and employees of the city shall receive such compensation as the mayor and council may fix at the time of their appointment or employment, subject to the limitations set forth in this section. The local governing body of the city may at its discretion by ordinance combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except mayor and council member, with any other elective or appointive office or employment so that one or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time. The city manager in a city under the city manager plan of government as provided in Chapter 19, article 6, may in his or her discretion combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except mayor and council member, with any other elective or appointive office or employment so that one or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time. The offices or employments so merged and combined shall always be construed

to be separate, and the effect of the combination or merger shall be limited to a consolidation of official duties only. The salary or compensation of the officer or employee holding the merged and combined offices or employments or offices and employments shall not be in excess of the maximum amount provided by law for the salary or compensation of the office, offices, employment, or employments so merged and combined.

Source: Laws 1907, c. 13, § 1, p. 107; R.S.1913, § 4872; Laws 1915, c. 85, § 1, p. 224; C.S.1922, § 4040; Laws 1923, c. 67, § 2, p. 203; C.S.1929, § 16-302; R.S.1943, § 16-305; Laws 1984, LB 368, § 1; Laws 1990, LB 756, § 1; Laws 1990, LB 931, § 2; Laws 1991, LB 12, § 1; Laws 1994, LB 76, § 486.

The city clerk is an elective officer, and cannot be appointed as a disbursing officer or to any other office by the council. City of Scottsbluff v. Southern Surety Co., 124 Neb. 260, 246 N.W. 346 (1933).

16-306 City of the second class; reorganization as city of the first class; council member; continuance in office.

In any city which becomes a city of the first class, any council member whose term extends through another year or years by reason of his or her prior election under the provisions governing cities of the second class shall hold his or her office as a council member from the ward in which he or she is a resident as if he or she were elected for the same term under the provisions of the Election Act governing cities of the first class.

Source: Laws 1915, c. 85, § 1, p. 224; C.S.1922, § 4040; Laws 1923, c. 67, § 2, p. 203; C.S.1929, § 16-302; R.S.1943, § 16-306; Laws 1969, c. 257, § 4, p. 934; Laws 1979, LB 80, § 24; Laws 1990, LB 957, § 4; Laws 1994, LB 76, § 487.

Cross References

Election Act, see section 32-101.
For reorganization as city of the first class, see sections 16-102 and 16-103.

16-307 Repealed. Laws 1994, LB 76, § 615.

16-308 Administrator, departments, and other appointed officers; enumerated; appointment and removal.

Each city of the first class shall have such departments and appointed officers as shall be established by ordinance passed by the city council, which shall include a city clerk, treasurer, engineer and attorney, and such officers as may otherwise be required by law. Except as provided in Chapter 19, article 6, the mayor may, with the approval of the city council, appoint the necessary officers, as well as an administrator, who shall perform such duties as prescribed by ordinance. Except as provided in Chapter 19, article 6, the appointed officers may be removed at any time by the mayor with approval of a majority of the council. The office of administrator may not be held by the mayor. The appointed administrator may concurrently hold any other appointive office provided for in this section and section 16-325.

Source: Laws 1901, c. 18, § 14, p. 233; Laws 1903, c. 19, § 2, p. 233; Laws 1907, c. 13, § 1, p. 107; R.S.1913, § 4874; Laws 1917, c. 95, § 1, p. 252; Laws 1921, c. 164, § 1, p. 657; C.S.1922, § 4042; C.S.1929, § 16-304; R.S.1943, § 16-308; Laws 1953, c. 26, § 1, p.

110; Laws 1961, c. 41, § 1, p. 171; Laws 1963, c. 61, § 2, p. 254; Laws 1974, LB 1024, § 1; Laws 1975, LB 93, § 1; Laws 1976, LB 782, § 12.

City attorney is appointive officer and not principal officer; may be removed at any time by mayor with approval of majority of city council; and has no statutory power to make governmental decisions which affect the city. Communication Workers of America, AFL-CIO v. City of Hastings, 198 Neb. 668, 254 N.W.2d 695 (1977).

16-309 Appointed officers; terms.

All officers appointed by the mayor and confirmed by the council shall hold the office to which they may be appointed until the end of the mayor's term of office and until their successors are appointed and qualified, unless sooner removed or the ordinance creating the office is repealed, except as otherwise specifically provided.

Source: Laws 1901, c. 18, § 15, p. 233; Laws 1903, c. 19, § 3, p. 234; R.S.1913, § 4875; C.S.1922, § 4043; C.S.1929, § 16-305; R.S. 1943, § 16-309; Laws 1997, LB 734, § 1.

16-310 Officers and employees; compensation fixed by ordinance.

The officers and employees in cities of the first class shall receive such compensation as the mayor and council shall fix by ordinance.

Source: Laws 1901, c. 18, § 17, p. 234; Laws 1901, c. 19, § 1, p. 306; Laws 1903, c. 19, § 4, p. 234; Laws 1907, c. 13, § 1, p. 108; R.S.1913, § 4876; Laws 1915, c. 85, § 2, p. 224; Laws 1917, c. 95, § 1, p. 253; Laws 1919, c. 36, § 1, p. 117; C.S.1922, § 4044; C.S.1929, § 16-306; Laws 1943, c. 30, § 1, p. 139; R.S. 1943, § 16-310; Laws 1947, c. 25, § 1, p. 126; Laws 1955, c. 29, § 1, p. 134; Laws 1963, c. 62, § 1, p. 255; Laws 1965, c. 50, § 1, p. 251; Laws 1969, c. 75, § 1, p. 404.

The clerk is required to perform all his duties for a compensation not to exceed the amount previously fixed by the council. City of Scottsbluff v. Southern Surety Company, 124 Neb. 260, 246 N.W. 346 (1933).

Where no ordinance fixing salaries was in effect, at time of the election, the fixing of salaries by the council after the election did not constitute raising such salaries. Wheelock v. McDowell, 20 Neb. 160, 29 N.W. 291 (1886).

16-310.01 Repealed. Laws 1959, c. 266, § 1.

16-311 Officers; qualifications.

All elected officers of a city of the first class shall be registered voters of the city.

Source: Laws 1901, c. 18, § 18, p. 234; Laws 1907, c. 13, § 1, p. 108; R.S.1913, § 4877; Laws 1917, c. 95, § 1, p. 254; C.S.1922, § 4045; C.S.1929, § 16-307; Laws 1931, c. 31, § 1, p. 122; C.S.Supp.,1941, § 16-307; R.S.1943, § 16-311; Laws 1969, c. 76, § 1, p. 405; Laws 1994, LB 76, § 488.

16-312 Mayor; powers and duties.

The mayor shall preside at all the meetings of the city council and shall have the right to vote when his or her vote will provide the additional vote required to create a number of votes equal to a majority of the number of members elected to the council. He or she shall have the superintending control of all the officers and affairs of the city and shall take care that the ordinances of the city and the provisions of law relating to cities of the first class are complied with.

He or she may administer oaths and shall sign the commissions and appointments of all the officers appointed in the city.

Source: Laws 1901, c. 18, § 19, p. 234; R.S.1913, § 4878; C.S.1922, § 4046; C.S.1929, § 16-308; R.S.1943, § 16-312; Laws 1957, c. 55, § 2, p. 266; Laws 1980, LB 662, § 1; Laws 1989, LB 790, § 1.

When the population of a city of the first class, at the last United States census, drops below the number required for such classification, it becomes a city of the second class and the duties of the mayor are definite and mandatory. State ex rel. Cashman v. Carmean, 138 Neb. 819, 295 N.W. 801 (1941).

16-313 Mayor; veto power; passage over veto.

The mayor shall have the power to approve or veto any ordinance passed by the city council, and to approve or veto any order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim; *Provided,* any ordinance, order, bylaw, resolution, award or vote to enter into any contract, or the allowance of any claim vetoed by the mayor, may be passed over his veto by a vote of two-thirds of all the members elected to the council, notwithstanding his veto. If the mayor neglects or refuses to sign any ordinance, order, bylaw, resolution, award or vote to enter into any contract, or the allowance of any claim, and returns the same with his objection in writing at the next regular meeting of the council, the same shall become a law without his signature. The mayor may veto any item or items of any appropriation bill, and approve the remainder thereof, and the item or items so vetoed may be passed by the council over the veto as in other cases.

Source: Laws 1901, c. 18, § 20, p. 234; R.S.1913, § 4879; C.S.1922, § 4047; C.S.1929, § 16-309.

Under a similar section where four councilmen voted for, and four councilmen against, the issuance of a liquor license, and the mayor voted for its issuance, such vote of the mayor does not come within any exceptions direct or implied, and such mayor has the authority to cast the deciding vote. Rohrer v. Hastings Brewing Company, 83 Neb. 111, 119 N.W. 27 (1908).

16-314 Mayor; legislative recommendations; jurisdiction.

The mayor shall, from time to time, communicate to the city council such information and recommend such measures as in his opinion may tend to the improvement of the finances of the city, the police, health, comfort, and general prosperity of the city, and may have such jurisdiction as may be invested in him by ordinance over all places within two miles of the corporate limits of the city, for the enforcement of health or quarantine ordinances and the regulation thereof.

Source: Laws 1901, c. 18, § 21, p. 235; Laws 1901, c. 19, § 2, p. 307; R.S.1913, § 4880; C.S.1922, § 4048; C.S.1929, § 16-310.

16-315 Repealed. Laws 1994, LB 76, § 615.

16-316 Mayor; pardons; remission of fines.

The mayor shall have power after conviction to remit fines and forfeitures, and to grant reprieves and pardons for all offenses arising under the ordinances of the city.

Source: Laws 1901, c. 18, § 23, p. 235; R.S.1913, § 4882; C.S.1922, § 4050; C.S.1929, § 16-312.

16-317 City clerk; duties; bond record; annual report.

The city clerk shall have the custody of all laws and ordinances, and shall keep a correct journal of the proceedings of the council; *Provided,* that after the period of time specified by the State Records Administrator pursuant to sections 84-1201 to 84-1220, the city clerk may transfer such journal of the proceedings of the council to the State Archives of the Nebraska State Historical Society, for permanent preservation. He shall also keep a record of all outstanding bonds against the city, showing the number and amount of each, for and to whom said bonds were issued; and when any bonds are purchased, or paid, or canceled, said record shall show the fact. In his annual report he shall describe particularly the bonds issued and sold during the year, and the terms of sale, with every item of expense thereof. He shall also perform such other duties as may be required by the ordinances of the city. He shall also make at the end of each month a report showing the amount appropriated to each fund, and the whole amount of warrants drawn thereon.

Source: Laws 1901, c. 18, § 25, p. 236; R.S.1913, § 4883; C.S.1922, § 4051; C.S.1929, § 16-313; R.S.1943, § 16-317; Laws 1973, LB 224, § 4.

This section does not require that the minutes of a meeting embody the full text of an ordinance adopted thereat, but they should set forth proceedings showing statutory requirements were complied with and that ordinance identified therein is preserved in a volume or file separate from the minutes. Webber v. City of Scottsbluff, 187 Neb. 282, 188 N.W.2d 214 (1971).

16-318 City treasurer; bond or insurance; premium; duties; reports.

The treasurer shall be required to give bond or evidence of equivalent insurance of not less than twenty-five thousand dollars, or he or she may be required to give bond in double the sum of money estimated by the council at any time to be in his or her hands belonging to the city and school district, and he or she shall be the custodian of all money belonging to the corporation. The city council shall pay the actual premium of the bond or insurance coverage of such treasurer. The treasurer shall keep a separate account of each fund or appropriation and the debts and credits belonging thereto. He or she shall give every person paying money into the treasury a receipt therefor, specifying date of payment and on what account paid. He or she shall also file copies of such receipts, except tax receipts, with his or her monthly reports, and he or she shall at the end of every month, and as often as may be requested, render an account to the city council, under oath, showing the state of the treasury at the date of such account, the amount of money remaining in each fund and the amount paid therefrom, and the balance of money in the treasury. He or she shall also accompany such account with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him or her, which warrants, with all vouchers held by him or her, shall be filed with his or her account in the clerk's office. He or she shall produce and show all funds shown by such report to be on hand, or satisfy the council or its committee that he or she has such funds in his or her custody or under his or her control. If the treasurer fails to render his or her account within twenty days after the end of the month, or by a later date established by the council, the mayor with the consent of the council may consider this failure as cause to remove the treasurer from office. The treasurer may employ and appoint a delinquent tax collector, who shall be allowed a percent upon his or her collections to be fixed by the council not to exceed the fees allowed by law to the county treasurer for like services, and upon taxes collected by such delinquent tax collector the city

treasurer shall receive no fees. The city treasurer shall prepare all paving and curbing tax lists and shall collect all paving and curbing taxes.

Source: Laws 1901, c. 18, § 26, p. 236; Laws 1909, c. 19, § 1, p. 181; R.S.1913, § 4884; C.S.1922, § 4052; C.S.1929, § 16-314; R.S. 1943, § 16-318; Laws 1969, c. 77, § 1, p. 405; Laws 2005, LB 528, § 1; Laws 2007, LB347, § 10.

16-318.01 City clerk; city treasurer; offices combined; duties; salary.

Cities of the first class may by ordinance combine the offices of clerk and treasurer and provide for the payment of a salary to the person holding such combined offices. Such salary shall not be in excess of the maximum amount provided by law for the salary of the clerk in such city plus the maximum amount provided by law for the salary of the treasurer in such a city. When these offices are so combined, the duties of the treasurer shall be performed by the clerk.

Source: Laws 1943, c. 41, § 1, p. 185; R.S.1943, § 19-1601; Laws 1945, c. 25, § 4, p. 136.

16-319 City attorney; duties; compensation; additional legal assistance.

The city attorney shall be the legal advisor of the council and city officers. The city attorney shall commence, prosecute, and defend all suits and actions necessary to be commenced, prosecuted, or defended on behalf of the city, or that may be ordered by the council. He shall attend meetings of the council and give them his opinion upon any matters submitted to him, either orally or in writing as may be required. The mayor and city council shall have the right to pay the city attorney additional compensation for legal services performed by him for the city or to employ additional legal assistance and to pay for such legal assistance out of the funds of the city. Whenever the mayor and city council have by ordinance so authorized, the board of public works shall have the right to pay the city attorney additional compensation for legal services performed by him for it or to employ additional legal assistance other than the city attorney and pay such legal assistance out of funds disbursed under the orders of the board of public works.

Source: Laws 1901, c. 18, § 27, p. 237; R.S.1913, § 4885; C.S.1922, § 4053; C.S.1929, § 16-315; R.S.1943, § 16-319; Laws 1947, c. 26, § 1, p. 127; Laws 1955, c. 30, § 1, p. 136.

City attorney is appointive officer and not principal officer; may be removed at any time by mayor with approval of majority of city council; and has no statutory power to make governmental decisions which affect the city. Communication Workers of America, AFL-CIO v. City of Hastings, 198 Neb. 668, 254 N.W.2d 695 (1977).

Where city attorney joined in resisting action to recover funds, demand to bring action was not required. Arthur v. Trindel, 168 Neb. 429, 96 N.W.2d 208 (1959).

16-320 City engineer; duties.

The city engineer shall make a record of the minutes of his surveys and of all work done for the city, including sewers, extension of water system and heating system, electric light and sewerage system and power plant, and accurately make such plats, sections, profiles, and maps as may be necessary in the prosecution of any public work, which shall be public records and belong to the city and be turned over to his successor.

Source: Laws 1901, c. 18, § 28, p. 237; R.S.1913, § 4886; C.S.1922, § 4054; C.S.1929, § 16-316.

Appointment of a board of public works is entirely optional. State ex rel. City of Grand Island v. Union Pacific R. R. Co., 152 Neb. 772, 42 N.W.2d 867 (1950).

16-321 City engineer; public works; prepare estimate of cost; board of public works; powers; contracts; procedure; city council; powers and duties; public emergency.

(1) The city engineer shall, when requested by the mayor or city council, make estimates of the cost of labor and material which may be done or furnished by contract with the city and make all surveys, estimates, and calculations necessary to be made for the establishment of grades, the building of culverts, sewers, electric light system, waterworks, power plant, public heating system, bridges, curbing, and gutters, the improvement of streets, and the erection and repair of buildings and shall perform such other duties as the council may require. When the city has appointed a board of public works, and the mayor and city council have by ordinance so authorized, such board may utilize its own engineering staff and may hire consulting engineers for the design and installation of extensions and improvements of the works under the jurisdiction of the board of public works. Whenever the mayor and city council have authorized the same, the board of public works may purchase material and employ labor for the enlargement or improvement of the systems and works under the jurisdiction of the board.

(2) Except as provided in section 18-412.01, no contract for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such improvement is assessed to the property, costing over twenty thousand dollars shall be made unless it is first approved by the city council.

(3) Except as provided in section 18-412.01, before the city council makes any contract in excess of twenty thousand dollars for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, an estimate of the cost shall be made by the city engineer and submitted to the council. In advertising for bids as provided in subsections (4) and (6) of this section, the council may publish the amount of the estimate.

(4) Advertisements for bids shall be required for any contract costing over twenty thousand dollars entered into (a) for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, or (b) for the purchase of equipment used in the construction of such enlargement or general improvements.

(5) A municipal electric utility may enter into a contract for the enlargement or improvement of the electric system or for the purchase of equipment used for such enlargement or improvement without advertising for bids if the price is: (a) Twenty thousand dollars or less; (b) forty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of one million dollars; (c) sixty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of five million dollars; or (d) eighty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of ten million dollars.

(6) The advertisement provided for in subsections (3) and (4) of this section shall be published at least seven days prior to the bid closing in a legal newspaper published in or of general circulation in the city. In case of a public emergency resulting from infectious or contagious diseases, destructive windstorms, floods, snow, war, or an exigency or pressing necessity or unforeseen need calling for immediate action or remedy to prevent a serious loss of, or serious injury or damage to, life, health, or property, estimates of costs and advertising for bids may be waived in the emergency ordinance authorized by section 16-405 when adopted by a three-fourths vote of the council and entered of record.

(7) If, after advertising for bids as provided in subsections (3), (4), and (6) of this section, the city council receives fewer than two bids on a contract or if the bids received by the city council contain a price which exceeds the estimated cost, the mayor and the city council may negotiate a contract in an attempt to complete the proposed enlargement or general improvements at a cost commensurate with the estimate given.

(8) If the materials are of such a nature that, in the opinion of the manufacturer and with the concurrence of the city council or board of public works, no cost can be estimated until the materials have been manufactured or assembled to the specific qualifications of the purchasing municipality, the city council or board of public works may authorize the manufacture and assemblage of such materials and may thereafter approve the estimated cost expenditure when it is provided by the manufacturer.

Source: Laws 1901, c. 18, § 29, p. 237; R.S.1913, § 4887; C.S.1922, § 4055; Laws 1925, c. 44, § 1, p. 174; C.S.1929, § 16-317; R.S.1943, § 16-321; Laws 1947, c. 26, § 2, p. 128; Laws 1951, c. 25, § 1, p. 115; Laws 1959, c. 61, § 1, p. 276; Laws 1969, c. 78, § 1, p. 407; Laws 1971, LB 85, § 1; Laws 1975, LB 171, § 1; Laws 1979, LB 356, § 1; Laws 1983, LB 304, § 1; Laws 1984, LB 540, § 7; Laws 1997, LB 238, § 1.

Engineer may make an estimate of cost of paving without making a separate estimate of individual items going to make up such complete estimate. Wurdeman v. City of Columbus, 100 Neb. 134, 158 N.W. 924 (1916).

16-321.01 Municipal bidding procedure; waiver; when.

Any municipal bidding procedure may be waived by the city council or board of public works (1) when materials or equipment are purchased at the same price and from the same seller as materials or equipment which have formerly been obtained pursuant to the state bidding procedure in sections 81-145 to 81-162 or (2) when the contract is negotiated directly with a sheltered workshop pursuant to section 48-1503.

Source: Laws 1997, LB 238, § 2.

16-322 Special engineer; when employed.

The mayor and council may, whenever they deem it expedient, employ a special engineer to make or assist in making any particular estimate or survey; and any estimate or survey made by such special engineer shall have the same validity and serve in all respects as though the same had been made by the city engineer.

Source: Laws 1901, c. 18, § 98, p. 297; R.S.1913, § 4888; C.S.1922, § 4056; C.S.1929, § 16-318.

16-323 Chief of police; police officers; powers and duties.

The chief of police shall have the immediate superintendence of the police. He or she and the police officers shall have the power and the duty to arrest all offenders against the laws of the state or of the city, by day or by night, in the same manner as a sheriff and to keep such offenders in the city prison or other place to prevent their escape until a trial or examination may be had before the proper officer. The chief of police and police officers shall have the same power as the sheriff in relation to all criminal matters arising out of a violation of a city ordinance and all process issued by the county court in connection with a violation of a city ordinance.

Source: Laws 1901, c. 18, § 30, p. 238; R.S.1913, § 4889; C.S.1922, § 4057; C.S.1929, § 16-319; R.S.1943, § 16-323; Laws 1972, LB 1032, § 103; Laws 1979, LB 80, § 26; Laws 1988, LB 1030, § 4.

Cross References

Ticket quota requirements, prohibited, see section 48-235.

Cited but not discussed. Frederickson v. Albertsen, 183 Neb. 494, 161 N.W.2d 712 (1968).

One can infer from this section that police officers may, under proper circumstances, exercise their authority and peacekeeping duties at any time. State v. Wilen, 4 Neb. App. 132, 539 N.W.2d 650 (1995).

16-324 Street commissioner; duties.

The street commissioner shall be subject to the orders of the mayor and council by resolution, have general charge, direction and control of all work in the streets, sidewalks, culverts and bridges of the city, except matters in charge of the board of public works, and shall perform such other duties as the council may require.

Source: Laws 1901, c. 18, § 31, p. 238; R.S.1913, § 4890; C.S.1922, § 4058; C.S.1929, § 16-320; R.S.1943, § 16-324; Laws 1961, c. 42, § 1, p. 173.

16-325 Board of public works; appointment; oath; terms; duties; removal from office.

(1) There may be in each city a board of public works which shall consist of three members, each having a three-year term of office, or five members, each having a five-year term of office, the number to be set by ordinance, which members shall be residents of such city and be appointed by the mayor by and with the assent of the council. When such board is first established, one member shall be appointed for a term of one year, one for two years, and one for three years and, in the case of a five-member board, an additional member shall be so appointed for four years and another for five years. Thereafter, as their terms expire, all members shall be appointed for a full term of three or five years as the case may be. The mayor, by and with the assent of the council, shall designate one of the members of such board to be the chairperson thereof.

(2) Each of the members of the board of public works shall, before entering upon the discharge of his or her duties, take an oath to discharge faithfully the duties of the office.

(3) It shall be the duty of the board of public works to (a) make contracts on behalf of the city for the performance of all such work and erection of all such improvements in the manner provided in section 16-321, (b) superintend the performance of all such work and the erection of all such improvements, (c)

approve the estimates of the city engineer, which may be made from time to time, of the value of the work as the same may progress, (d) accept any work done or improvements made when the same shall be fully completed according to contract, subject to the approval of the mayor and council, and (e) perform such other duties as may be conferred upon such board by ordinance.

(4) Any member of the board of public works may at any time be removed from office by the mayor and a majority of the council, and the proceedings in regard thereto shall be entered in the journal of the council.

Source: Laws 1901, c. 18, § 70, p. 283; R.S.1913, § 4891; C.S.1922, § 4059; Laws 1925, c. 44, § 2, p. 175; C.S.1929, § 16-321; R.S.1943, § 16-325; Laws 1947, c. 26, § 3, p. 129; Laws 1953, c. 26, § 2, p. 111; Laws 1965, c. 52, § 1, p. 255; Laws 1971, LB 494, § 2; Laws 1973, LB 24, § 1; Laws 1984, LB 682, § 6.

A member of the board of public works is prohibited from being interested in purchase of any material to be used for municipal purposes. Arthur v. Trindel, 168 Neb. 429, 96 N.W.2d 208 (1959).

Appointment of a board of public works is entirely optional. State ex rel. City of Grand Island v. Union Pacific R. R. Co., 152 Neb. 772, 42 N.W.2d 867 (1950).

16-326 Elective officers; compensation; change during term prohibited; exception.

The emoluments of any elective officer shall not be increased or diminished during the term for which he was elected, except that when there are officers elected to the council, or to a board or commission having more than one member and the terms of one or more members commence and end at different times, the compensation of all members of such council, board, or commission may be increased or diminished at the beginning of the full term of any member thereof. No person who shall have resigned or vacated any office shall be eligible to the same during the time for which he was elected when, during the same time, the emoluments have been increased.

Source: Laws 1901, c. 18, § 32, p. 238; R.S.1913, § 4892; C.S.1922, § 4060; C.S.1929, § 16-322; R.S.1943, § 16-326; Laws 1969, c. 75, § 2, p. 404; Laws 1972, LB 943, § 1.

Member of board of public works cannot contract with city or village for additional salary as manager of public utilities. Neisius v. Henry, 142 Neb. 29, 5 N.W.2d 291 (1942).

16-327 Officers; reports required.

The mayor or council shall have power, when he, she, or they deem it necessary, to require any officer of the city to exhibit his or her accounts or other papers and make reports to the council, in writing, touching any subject or matter they may require pertaining to the office.

Source: Laws 1901, c. 18, § 33, p. 239; R.S.1913, § 4893; C.S.1922, § 4061; C.S.1929, § 16-323; R.S.1943, § 16-327; Laws 1979, LB 80, § 27.

16-328 Transferred to section 19-3501.

16-329 Repealed. Laws 1971, LB 562, § 7.

16-330 Repealed. Laws 1983, LB 237, § 22.

16-331 Repealed. Laws 1983, LB 237, § 22.

16-332 Repealed. Laws 1983, LB 237, § 22.

16-333 Repealed. Laws 1983, LB 237, § 22.

16-334 Repealed. Laws 1983, LB 237, § 22.

16-335 Repealed. Laws 1983, LB 237, § 22.

16-336 Repealed. Laws 1983, LB 237, § 22.

16-336.01 Repealed. Laws 1983, LB 237, § 22.

16-337 Repealed. Laws 1983, LB 237, § 22.

ARTICLE 4
COUNCIL AND PROCEEDINGS

Section
16-401. Council; meetings, regular and special; quorum.
16-402. Council; president; acting president; duties.
16-403. Council; ordinances; passage; proof; publication.
16-404. Council; ordinances, resolutions, or orders; procedure for passage; vote of mayor, when; amendments; revision ordinances.
16-405. Council; ordinances; style; publication; emergency ordinances.
16-406. Council; testimony; power to compel; oaths.

16-401 Council; meetings, regular and special; quorum.

Regular meetings of the council shall be held at such times as may be fixed by ordinance and special meetings whenever called by the mayor or any four council members. A majority of all the members elected to the council shall constitute a quorum for the transaction of any business, except as otherwise required by law, but a less number may adjourn, from time to time, and compel the attendance of absent members. An affirmative vote of not less than one-half of the elected members shall be required for the transaction of any business.

Source: Laws 1901, c. 18, § 16, p. 233; R.S.1913, § 4894; C.S.1922, § 4062; C.S.1929, § 16-401; R.S.1943, § 16-401; Laws 1975, LB 118, § 1; Laws 1987, LB 652, § 1.

Any business that might have been transacted at the regular meeting may be transacted at an adjournment thereof, where the adjournment is taken to a fixed date, unless a specified provision is made to the contrary. Ex parte Wolf, 14 Neb. 24, 14 N.W. 660 (1883).

16-402 Council; president; acting president; duties.

The council shall elect one of the council members as president of the council and he or she shall preside at all meetings of the council in the absence of the mayor. In the absence of the president, the council members shall elect one of their own body to occupy the place temporarily, who shall be styled acting president of the council. The president and acting president, when occupying the place of mayor, shall have the same privileges as other members of the council, and all acts of the president or acting president while so acting shall be as binding upon the council and upon the city as if done by the mayor.

Source: Laws 1901, c. 18, § 53, p. 259; R.S.1913, § 4895; C.S.1922, § 4063; C.S.1929, § 16-402; R.S.1943, § 16-402; Laws 1987, LB 652, § 2.

16-403 Council; ordinances; passage; proof; publication.

All ordinances shall be passed pursuant to such rules and regulations as the council may provide, and all such ordinances may be proved by the certificate of the clerk under the seal of the city. When printed or published in book or pamphlet form and purporting to be published by authority of the city, such ordinances shall be read and received in evidence in all courts and places without further proof. The passage, approval, and publication or posting of said ordinance shall be sufficiently proved by a certificate under the seal of the city, from the clerk thereof, showing that such ordinance was passed and approved, and when and in what paper the same was published, and when and by whom and where the same was posted. When ordinances are published in book or pamphlet form, purporting to be published by authority of the city council, the same need not be otherwise published; and such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances, as of the dates mentioned in such book or pamphlet, in all courts without further proof.

Source: Laws 1901, c. 18, § 46, p. 244; R.S.1913, § 4896; C.S.1922, § 4064; C.S.1929, § 16-403.

Ordinances as published in book form are not competent evidence unless ''purported to be published by authority of the city''. Christensen v. Tate, 87 Neb. 848, 128 N.W. 622 (1910).

An ordinance that is duly approved and published is in full force and effect. In re Langston, 55 Neb. 310, 75 N.W. 828 (1898).

Where certificate shows ordinance was not properly published, ordinance is not admissible without further proof. Union P. Ry. Co. v. Montgomery, 49 Neb. 429, 68 N.W. 619 (1896).

16-404 Council; ordinances, resolutions, or orders; procedure for passage; vote of mayor, when; amendments; revision ordinances.

(1) All ordinances and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the council. The mayor may vote on any such matter when his or her vote will provide the additional vote required to create a number of votes equal to a majority of the number of members elected to the council, and the mayor shall, for the purpose of such vote, be deemed to be a member of the council.

(2) Ordinances of a general or permanent nature shall be read by title on three different days unless three-fourths of the council members vote to suspend this requirement, except that in a city having a commission form of government such requirement may be suspended by a three-fifths majority vote. Regardless of the form of government, such requirement shall not be suspended for any ordinance for the annexation of territory. In case such requirement is suspended, the ordinances shall be read by title or number and then moved for final passage. Three-fourths of the council members may require a reading of any such ordinance in full before enactment under either procedure set out in this section, except that in a city having a commission form of government such reading may be required by a three-fifths majority vote.

(3) Ordinances shall contain no subject which is not clearly expressed in the title, and, except as provided in section 19-915, no ordinance or section thereof shall be revised or amended unless the new ordinance contains the entire ordinance or section as revised or amended and the ordinance or section so amended is repealed, except that:

(a) For an ordinance revising all the ordinances of the city, the only title necessary shall be An ordinance of the city of ....., revising all the ordinances of the city. Under such title all the ordinances may be revised in sections and

chapters or otherwise, may be corrected, added to, and any part suppressed, and may be repealed with or without a saving clause as to the whole or any part without other title; and

(b) For an ordinance used solely to revise ordinances or code sections or to enact new ordinances or code sections in order to adopt statutory changes made by the Legislature which are specific and mandatory and bring the ordinances or code sections into conformance with state law, the title need only state that the ordinance revises those ordinances or code sections affected by or enacts ordinances or code sections generated by legislative changes. Under such title, all such ordinances or code sections may be revised, repealed, or enacted in sections and chapters or otherwise by a single ordinance without other title.

Source: Laws 1901, c. 18, § 37, p. 240; Laws 1903, c. 19, § 5, p. 235; R.S.1913, § 4897; C.S.1922, § 4065; C.S.1929, § 16-404; R.S. 1943, § 16-404; Laws 1961, c. 43, § 1, p. 174; Laws 1969, c. 108, § 2, p. 510; Laws 1972, LB 1235, § 1; Laws 1975, LB 172, § 1; Laws 1980, LB 662, § 2; Laws 1989, LB 790, § 2; Laws 1990, LB 966, § 1; Laws 1994, LB 630, § 2; Laws 2003, LB 365, § 1.

Cross References

For other provisions for revision of ordinances, see section 16-247.

To be valid, a resolution recommending issuance or refusal of liquor license must be adopted by a majority of all elected members of city council. Hadlock v. Nebraska Liquor Control Commission, 193 Neb. 721, 228 N.W.2d 887 (1975).

Title of condemnation ordinance was sufficient. Webber v. City of Scottsbluff, 155 Neb. 48, 50 N.W.2d 533 (1951).

Provision of this section does not require a resolution or ordinance for a special election to authorize the construction of waterworks to be read three different days. Hevelone v. City of Beatrice, 120 Neb. 648, 234 N.W. 791 (1931).

To extent that ordinances are plainly repugnant, first is repealed by implication. Ex parte Wolf, 14 Neb. 24, 14 N.W. 660 (1883).

16-405 Council; ordinances; style; publication; emergency ordinances.

The style of ordinances shall be: ''Be it ordained by the mayor and council of the city of .....,'' and all ordinances of a general nature shall, within fifteen days after they are passed, be published in some newspaper published within the city, or in pamphlet form, to be distributed or sold, as may be provided by ordinance; and every ordinance fixing a penalty or forfeiture for its violation shall, before the same takes effect, be published for at least one week in some manner above prescribed; *Provided*, in cases of riots, infectious diseases or other impending danger, or any other emergency requiring its immediate operation, such ordinance shall take effect upon the proclamation of the mayor immediately upon its first publication as above provided.

Source: Laws 1901, c. 18, § 47, p. 245; R.S.1913, § 4898; C.S.1922, § 4066; C.S.1929, § 16-405; R.S.1943, § 16-405; Laws 1971, LB 282, § 1.

Publication in one regular issue of a legal newspaper in any week was sufficient notwithstanding this section and home rule charter. Skag-Way Department Stores, Inc. v. City of Grand Island, 176 Neb. 169, 125 N.W.2d 529 (1964).

One insertion in a daily paper does not meet the requirement of statute, since a publication must be continued in each issue thereof for a week. Union Pacific Railway Co. v. McNally, 54 Neb. 112, 74 N.W. 390 (1898); Union Pacific Railway Co. v. Montgomery, 49 Neb. 429, 68 N.W. 619 (1896).

One publication is sufficient if in weekly paper. State ex rel. Hahn v. Hardy, 7 Neb. 377 (1878).

16-406 Council; testimony; power to compel; oaths.

The council or any committee of the members thereof shall have power to compel the attendance of witnesses for the investigation of matters that may

come before them; and the presiding officer of the council, or chairman of such committee for the time being, may administer such requisite oaths; and such council or committee shall have the same authority to compel the giving of testimony as is conferred on courts of justice.

Source: Laws 1901, c. 18, § 94, p. 296; R.S.1913, § 4899; C.S.1922, § 4067; C.S.1929, § 16-406.

ARTICLE 5
CONTRACTS AND FRANCHISES

Section
16-501. Contracts; appropriation a condition precedent.
16-502. Officer; extra compensation prohibited; exception.
16-503. Contracts; concurrence of majority of council required; vote of mayor; record.

16-501 Contracts; appropriation a condition precedent.

No contract shall be made by the city council or any committee or member thereof and no expense shall be incurred by any of the officers or departments of the corporation, whether the object of the expenditure shall have been ordered by the city council or not, unless an appropriation shall have been previously made concerning such expense, except as herein otherwise expressly provided.

Source: Laws 1901, c. 18, § 44, p. 243; R.S.1913, § 4900; C.S.1922, § 4068; C.S.1929, § 16-501.

16-502 Officer; extra compensation prohibited; exception.

No officer shall receive any pay or perquisites from the city other than his or her salary, as provided by ordinance and the law relating to cities of the first class, and the city council shall not pay or appropriate any money or any valuable thing to any person not an officer for the performance of any act, service, or duty, the doing or performance of which shall come within the proper scope of the duties of any officer of such corporation, unless the same is specifically appropriated and ordered by a vote of three-fourths of all the members elected to the council.

Source: Laws 1901, c. 18, § 45, p. 244; R.S.1913, § 4901; C.S.1922, § 4069; C.S.1929, § 16-502; R.S.1943, § 16-502; Laws 1957, c. 38, § 2, p. 207; Laws 1959, c. 62, § 1, p. 279; Laws 1961, c. 283, § 2, p. 830; Laws 1971, LB 491, § 3; Laws 1972, LB 1209, § 1; Laws 1973, LB 24, § 2; Laws 1983, LB 370, § 7.

Cross References

For other provisions of officers interested in public contracts, see sections 49-14,103.01 to 49-14,103.07.

Contracts between officer and city are void, and amount paid officer can be recovered. Arthur v. Trindel, 168 Neb. 429, 96 N.W.2d 208 (1959).

Salary of clerk was the limit of city clerk's compensation for official services of all kinds. City of Scottsbluff v. Southern Surety Co., 124 Neb. 260, 246 N.W. 346 (1933).

Under former law, the fact that a mayor and member of city council may have been subscribers for stock of the water company and such stock subscriptions were still unpaid, did not void a judgment of the water company against such city, where such city officers were no longer stockholders of such water company. City of Broken Bow v. Broken Bow Water-Works Company, 57 Neb. 548, 77 N.W. 1078 (1899).

Under former law, where a contract was made between the contractor and the city and a member of the city council was a stockholder and officer of the corporation, such contract was illegal and a taxpayer could enjoin the same. McElhinney v. City of Superior, 32 Neb. 744, 49 N.W. 705 (1891).

Under former law, a contract could be canceled at suit of taxpayer where one of the members of the council was also a stockholder in and officer of the corporation contracting with the city, but city must pay for the reasonable value of the services received prior to the commencement of the action. Grand Island Gas Company v. West, 28 Neb. 852, 45 N.W. 242 (1890).

16-503 Contracts; concurrence of majority of council required; vote of mayor; record.

On the passage or adoption of every resolution or order to enter into a contract, or accepting of work done under contract, by the mayor or council, the yeas and nays shall be called and entered upon the record. To pass or adopt any bylaw or ordinance or any such resolution or order, a concurrence of a majority of the whole number of the members elected to the council shall be required. The mayor may vote on any such matter when his or her vote will provide the additional vote required to create a number of votes equal to a majority of the number of members elected to the council, and the mayor shall, for the purpose of such vote, be deemed to be a member of the council. The requirements of a roll call or viva voce vote shall be satisfied by a city which utilizes an electronic voting device which allows the yeas and nays of each council member to be readily seen by the public.

Source: Laws 1901, c. 18, § 34, p. 239; R.S.1913, § 4903; C.S.1922, § 4071; C.S.1929, § 16-503; R.S.1943, § 16-503; Laws 1961, c. 43, § 2, p. 174; Laws 1975, LB 172, § 2; Laws 1978, LB 609, § 1; Laws 1980, LB 662, § 3; Laws 1988, LB 625, § 1.

Under former law mayor was not authorized to cast deciding vote on acceptance of bid for public works. Day v. City of Beatrice, 169 Neb. 858, 101 N.W.2d 481 (1960).

ARTICLE 6

PUBLIC IMPROVEMENTS

(a) CONDEMNATION PROCEEDINGS

Section

(b) STREETS

Section

(h) PARKS

16-695. Parks; swimming pool; stadium; other facilities; acquisition of land; bonds; election; issuance; interest; term.
16-696. Board of park commissioners; appointment; number; qualifications; powers and duties; recreation board; board of park and recreation commissioners.
16-697. Park fund or park and recreation fund; annual levy; audit of accounts; warrants; contracts; reports.
16-697.01. Parks, recreational facilities, and public grounds; acquisition; control.
16-697.02. Borrowing; authorized; bonds; approval of electors.

(i) MARKETS

16-698. Markets; construction; operation; location; approval of electors; notice; when required.
16-699. Regulation of markets.

(j) PUBLIC BUILDINGS

16-6,100. Public buildings; construction; bonds authorized; approval of electors required, when; revenue bonds.
16-6,100.01. Joint city-county building; authorized; acquisition of land; erect; equip, furnish, maintain, and operate.
16-6,100.02. Joint city-county building; expense; bonds; election; approval by electors.
16-6,100.03. Joint city-county building; indebtedness; bonds; principal and interest; in addition to other limitations.
16-6,100.04. Joint city-county building; county board and city council; building commission; powers; duties.
16-6,100.05. Joint city-county building; building commission; plans and specifications; personnel; compensation; contracts.
16-6,100.06. Joint city-county building; annual budget of city and county.
16-6,100.07. Joint city-county building; building commission; accept gifts.

(k) WATERWORKS; GAS PLANT

16-6,101. Acquisition; revenue bonds; approval of electors required.

(l) SANITARY SEWER AND WATER MAIN CONNECTION DISTRICT

16-6,102. Districts; created.
16-6,103. Districts; benefits; certification; connection fee.
16-6,104. Construction of sewer and water mains; cost; payment; connection fees; use.
16-6,105. Construction of sewer and water mains; cost; revenue bonds; issuance authorized.

(m) FLOOD CONTROL

16-6,106. Powers.
16-6,107. Costs; financing.
16-6,108. General obligation bonds; issuance; hearing.
16-6,109. Sections; supplemental to other laws.

(n) PUBLIC PASSENGER TRANSPORTATION SYSTEM

16-6,110. Acquisition of system; acceptance of funds; administration; powers.

(o) WATER SUPPLY OR DISTRIBUTION FACILITY PROJECTS

16-6,111. Repealed. Laws 1999, LB 640, § 1.
16-6,112. Repealed. Laws 1999, LB 640, § 1.
16-6,113. Repealed. Laws 1999, LB 640, § 1.
16-6,114. Repealed. Laws 1999, LB 640, § 1.
16-6,115. Repealed. Laws 1999, LB 640, § 1.
16-6,116. Repealed. Laws 1999, LB 640, § 1.

(a) CONDEMNATION PROCEEDINGS

16-601 Transferred to section 19-709.

16-602 Repealed. Laws 1951, c. 101, § 127.

16-603 Repealed. Laws 1951, c. 101, § 127.

16-604 Repealed. Laws 1951, c. 101, § 127.

16-605 Property; condemnation for streets; damages; how paid.

Payment of damages assessed for the appropriation of private property for streets, alleys or boulevards in cities of the first class may be made out of the general or any other surplus fund.

Source: Laws 1903, c. 19, § 7, p. 239; R.S.1913, § 4906; C.S.1922, § 4074; Laws 1923, c. 145, § 1, p. 358; C.S.1929, § 16-603.

Appropriation of lands for streets outside of city and the payment therefor is authorized. Webber v. City of Scottsbluff, 138 Neb. 416, 293 N.W. 276 (1940).

16-606 Property; condemnation for streets; assessments; levy; collection.

The council may assess and levy the whole expense and damage incurred in the creation of any street, avenue, or alley upon the real property fronting upon the same and other property nearby that may be benefited thereby in proportions according to benefits. Such assessments and levy shall be made by resolution, at a regular meeting of the council, and notice of the time of such meeting and that such assessments will be made thereat shall be published in a newspaper in said city ten days before such meeting. Such special taxes shall be due and payable to the city treasurer in thirty days after the assessment and levy. At the time of the next certification to the county clerk for general revenue purposes, such special assessment and levy, so far as not then paid, shall be certified to the county clerk and be put upon the tax list and be collected as other real estate taxes are collected, and paid over to the city treasurer to reimburse the city. Such special taxes shall be a lien on the property upon which assessed and levied from the assessment, and shall bear interest at a rate not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time due until paid. The proceedings for widening streets shall be the same as herein provided for creating new streets, and shall apply to the widening of streets, alleys, and avenues.

Source: Laws 1903, c. 19, § 7, p. 239; R.S.1913, § 4906; C.S.1922, § 4074; Laws 1923, c. 145, § 1, p. 359; C.S.1929, § 16-603; R.S.1943, § 16-606; Laws 1980, LB 933, § 9; Laws 1981, LB 167, § 10.

16-607 Property; condemnation for other public purposes; bonds; issuance; approval by electors.

(1) Payment of damages assessed for the appropriation of private property for any of the other purposes mentioned in section 19-709 may be made by the sale of the negotiable bonds of the city, and for that purpose the mayor and council shall have power to borrow money and to pledge the property and credit of the city upon its negotiable bonds or otherwise in an amount not exceeding in the aggregate two hundred thousand dollars.

(2) No such bonds, referred to in subsection (1) of this section, shall be issued by the city council until the question of issuing the same shall have been

submitted to the electors of the city at an election called and held for that purpose, notice of which election shall have been given by publication once each week three successive weeks prior thereto in some legal newspaper published in or of general circulation in such city, and a majority of the electors voting on the proposition shall have voted in favor of issuing such bonds. The proposition shall not be submitted until after the appraisers referred to in section 76-710 have made their report fixing the amount of the damages for the property appropriated. If the proposition fails to carry, it shall be equivalent to a repeal of the ordinance authorizing the appropriation proceedings, and the city shall not be bound in any way on account of the appropriation proceedings referred to in section 19-709.

(3) When the bonds, referred to in subsections (1) and (2) of this section, are for the purpose of purchasing any system or portion of a system already in existence, it shall not be necessary for the city engineer to make or the city council to adopt any plans or specifications for the work already in existence, but only for proposed changes or additional work.

Source: Laws 1923, c. 145, § 1, p. 359; C.S.1929, § 16-603; R.S.1943, § 16-607; Laws 1951, c. 26, § 1, p. 117; Laws 1953, c. 27, § 1, p. 113; Laws 1971, LB 534, § 12.

16-608 Property; condemnation; plat; filing.

All cities of the first class upon condemning private property, shall cause to be recorded an accurate plat and a clear, definite description of the property so taken in the office of the register of deeds for the county within which such city is located, within sixty days after the other legal steps for the acquisition of such title shall have been taken.

Source: Laws 1901, c. 18, § 50, p. 268; R.S.1913, § 4907; C.S.1922, § 4075; C.S.1929, § 16-604.

(b) STREETS

16-609 Improvements; power of city.

The council shall have power to open, control, name, rename, extend, widen, narrow, vacate, grade, curb, gutter, park, and pave or otherwise to improve and control and keep in good repair and condition, in any manner it may deem proper, any street, avenue, or alley, or public park or square, or part of either, within or without the limits of the city, and it may grade partially or to the established grade, or park or otherwise improve any width or part of any such street, avenue, or alley. When the city vacates all or any portion of a street, avenue, or alley, or public park or square, or part of either, the city shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating ordinance with the register of deeds for the county in which the vacated property is located to be indexed against all affected lots.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4908; C.S.1922, § 4076; C.S.1929, § 16-605; R.S.1943, § 16-609; Laws 2001, LB 483, § 4.

Authority is conferred on cities of the first class to regulate parking of vehicles on the street. Vap v. City of McCook, 178 Neb. 844, 136 N.W.2d 220 (1965).

Grant of power to city to curb and pave street was a delegation of police power. Hillerege v. City of Scottsbluff, 164 Neb. 560, 83 N.W.2d 76 (1957).

While authority is conferred upon the municipality to control its streets, yet the discretion must be exercised in a reasonable and not in an arbitrary and discriminatory manner. State ex rel. Andruss v. Mayor & Council of City of North Platte, 120 Neb. 413, 233 N.W. 4 (1930).

The mere establishment of grade, without alteration, creates no damage and the statute of limitations does not commence to run against property owners' right by reason thereof, until there is actual alteration. Hilger v. City of Nebraska City, 97 Neb. 268, 149 N.W. 807 (1914).

The mere filing of petitions sufficient upon their face, without proof of such allegations, is not sufficient to confer jurisdiction upon the city to make the improvements and to assess the costs upon the abutting property, where the jurisdictional facts are put in issue, and injunction will restrain the taxes therefor. City of South Omaha v. Tighe, 67 Neb. 572, 93 N.W. 946 (1903).

The duty devolves on cities and towns to keep streets and sidewalks reasonably safe and fit for travel, and such duty applies to defects in construction, as well as neglect of repair. Village of Plainview v. Mendelson, 65 Neb. 85, 90 N.W. 956 (1902).

16-609.01 Land abutting street; industrial tract or school site; improvement; agreement.

Whenever any street of any city of the first class is partly inside the city and partly outside the city, and the land outside the city abutting on such street is an industrial tract or a school site, or the property of the state or any political subdivision thereof, such street may be included in any street improvement project of the city upon the written agreement thereto of the owner or owners of such land outside the city, which agreement shall subject such land to the assessment of costs of the benefits resulting from the improvement. Except as provided in this section, any such improvement shall be subject to the provisions of sections 16-609 to 16-655.

Source: Laws 1965, c. 46, § 1, p. 246.

16-610 Public ways; maintenance and repair.

The mayor and city council shall have the care, supervision and control of all public highways, bridges, streets, alleys, public squares and commons, and shall cause the same to be kept open and in repair and free from nuisances.

Source: Laws 1901, c. 18, § 35, p. 239; Laws 1909, c. 19, § 1, p. 183; R.S.1913, § 4909; C.S.1922, § 4077; C.S.1929, § 16-606.

Contract between city and state prohibiting parking on designated street was upheld. Vap v. City of McCook, 178 Neb. 844, 136 N.W.2d 220 (1965).

Duty devolving on cities and villages to keep streets and sidewalks reasonably safe and fit for travel applies to defects in construction as well as neglect to repair, and the safety required extends to travel by night as well as by day. Village of Plainview v. Mendelson, 65 Neb. 85, 90 N.W. 956 (1902).

It is the duty of a city to keep all its streets and bridges in a reasonably safe condition for travel and such care and diligence is not controlled or affected by the fact that they are not as frequently used as some others in the city. City of South Omaha v. Powell, 50 Neb. 798, 70 N.W. 391 (1897).

16-611 Vacation of street or alley; abutting property; how treated.

(1) Upon the vacation of any street or alley by the city, the title to such property shall vest in the owners of the abutting property and become a part of such property, one-half on each side thereof, unless the city reserves title in the ordinance vacating such street or alley. If title is retained by the city, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the city.

(2) When a portion of a street or alley is vacated only on one side of the center thereof, the title to such property shall vest in the owner of the abutting property and become part of such property unless the city reserves title in the ordinance vacating a portion of such street or alley. If title is retained by the city, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the city.

(3) When the city vacates all or any portion of a street or alley, the city shall, within thirty days after the effective date of the vacation, file a certified copy of

the vacating ordinance with the register of deeds for the county in which the vacated property is located to be indexed against all affected lots.

(4) The title to property vacated pursuant to this section shall be subject to the following:

(a) There is reserved to the city the right to maintain, operate, repair, and renew public utilities existing at the time title to the property is vacated there; and

(b) There is reserved to the city, any public utilities, and any cable television systems the right to maintain, repair, renew, and operate water mains, gas mains, pole lines, conduits, electrical transmission lines, sound and signal transmission lines, and other similar services and equipment and appurtenances, including lateral connections or branch lines, above, on, or below the surface of the ground that are existing as valid easements at the time title to the property is vacated for the purposes of serving the general public or the abutting properties and to enter upon the premises to accomplish such purposes at any and all reasonable times.

Source: Laws 1901, c. 18, § 48, IV, p. 145; Laws 1903, c. 19, § 7, p. 237; R.S.1913, § 4910; C.S.1922, § 4078; C.S.1929, § 16-607; R.S. 1943, § 16-611; Laws 1969, c. 58, § 2, p. 363; Laws 2001, LB 483, § 5; Laws 2005, LB 161, § 3.

Where conveyance describes lot by block and number, contains no reservation of rights in alley, conveyance transfers fee to center line of abutting portion of vacated alley even though conveyance also describes lots by metes and bounds which did not include any part of alley and used edge of alley as boundary. Seefus v. Briley, 185 Neb. 202, 174 N.W.2d 339 (1970).

This section is not applicable to vacation of a nominal street of a platted addition. Trahan v. Council Bluffs Steel Erection Co., 183 Neb. 170, 159 N.W.2d 207 (1968).

This section has no relation to streets which have been platted and dedicated. Dell v. City of Lincoln, 170 Neb. 176, 102 N.W.2d 62 (1960).

Cities own in fee simple, the streets, alleys, etc., and may maintain ejectment, may vacate them, or even sell and dispose of them. Krueger v. Jenkins, 59 Neb. 641, 81 N.W. 844 (1900).

There is no constitutional restraint of the Legislature's plenary power, to vacate or discontinue the public easement on streets. City of Columbus v. Union Pacific R. R. Co., 137 F. 869 (8th Cir. 1905).

16-612 Repealed. Laws 1980, LB 660, § 1.

16-613 Bridges; repair; duty of county; aid by city, when.

All public bridges within such city, exceeding sixty feet in length, and the approaches thereto, over any stream crossing a county highway, shall be constructed and kept in repair by the county. When any city has constructed or repaired a bridge over sixty-feet span with approaches thereto, on any county highway within its corporate limits, and has incurred a debt for the same, then the treasurer of the county in which said bridge is located shall pay to the treasurer of the city seventy-five percent of all bridge taxes collected in said city until said debt and interest upon the same are fully paid. The city council may appropriate a sum not exceeding five dollars per linear foot to aid in the construction of any county bridge within the limits of such city, or may appropriate a like sum to aid in the construction of any bridge contiguous to said city on a highway leading to the same.

Source: Laws 1909, c. 19, § 1, p. 183; R.S.1913, § 4912; C.S.1922, § 4080; C.S.1929, § 16-609; R.S.1943, § 16-613; Laws 1955, c. 31, § 1, p. 137.

City is required to exercise reasonable care and diligence in keeping streets and bridges in a safe condition for travel, even though they may not be frequently used by the public. City of South Omaha v. Powell, 50 Neb. 798, 70 N.W. 391 (1897).

16-614 House numbers.

The mayor and city council may provide for regulating and requiring the numbering of houses along public streets or avenues.

Source: Laws 1901, c. 18, § 50, p. 268; R.S.1913, § 4913; C.S.1922, § 4081; C.S.1929, § 16-610.

16-615 Grade or change of grade; procedure; damages; how ascertained; assessments.

The mayor and council shall have power by ordinance to establish the grade of any street, avenue, or alley in the city or within a county industrial area as defined in section 13-1111 contiguous to such city. When the grade of any street, avenue, or alley has been established, the grade of all or any part shall not be changed unless the city clerk has sent notice of the proposed change in grade to the owners of the lots or land abutting upon the street, avenue, or alley or part of a street, avenue, or alley where such change of grade is to be made. The notice shall be sent to the addresses of the owners as they shall appear in the office of the register of deeds upon the date of the mailing of the notice. The notice shall be sent by regular United States mail, postage prepaid, postmarked at least twenty-one days before the date upon which the city council takes final action on approval of the ordinance authorizing the change in grade. The notice shall inform the owner of the nature of the proposed change, that final action by the city council is pending, and of the location where additional information on the project may be obtained. Following the adoption of an ordinance changing the grade of all or any part of a street, avenue, or alley, no change in grade shall be made until the damages to property owners which may be caused by such change of grade are determined as provided in sections 76-704 to 76-724.

For the purpose of paying the damages, if any, so awarded, the mayor and council shall have power to borrow money from any available fund in the amount necessary, which amount, upon the collection of the same by special assessment, shall be transferred from such special fund to the fund from which it has been borrowed. No street, avenue, or alley shall be worked to such grade or change of grade until the damages so assessed shall be tendered to such property owners or their agents. Before the mayor and council enter into any contract to grade any such street, avenue, or alley, the damages, if any, sustained by the property owners, shall be ascertained by condemnation proceedings. For the purpose of paying the damages awarded and the costs of the condemnation proceedings, the mayor and city council shall have power to levy a special tax upon the lots and lands abutting upon such street, avenue, or alley, or part thereof, so graded, as adjudged by the mayor and council to be especially benefited in proportion to such benefits. Such special tax or taxes shall be collected as other special taxes.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4914; C.S.1922, § 4082; C.S.1929, § 16-611; R.S.1943, § 16-615; Laws 1951, c. 101, § 51, p. 470; Laws 1969, c. 81, § 1, p. 412; Laws 1995, LB 196, § 1.

Claim for injunctive relief on ground of violation of this section was abandoned in Supreme Court. Danielson v. City of Bellevue, 167 Neb. 809, 95 N.W.2d 57 (1959).

Recovery could not be had for change in grade of street where only damage resulted from destruction of shade trees. Weibel v. City of Beatrice, 163 Neb. 183, 79 N.W.2d 67 (1956).

Where a taxpayer was one of the petitioners for the creation of paving district, and stood by while such improvement was in progress, such taxpayer cannot enjoin the collections of special taxes to pay for such improvement. Kister v. City of Hastings, 108 Neb. 476, 187 N.W. 909 (1922).

Provision for filing of petitions, the assessment and payment of damages, to lot owners, refers to new construction in the creation, opening and improvements of streets, and not to ordinary repairs of streets or alleys. Payment of such repairs, may be made without the levy of special taxes. Hilger v. City of Nebraska City, 97 Neb. 268, 149 N.W. 807 (1914).

Where a husband had created improvements on his wife's lot he was not entitled to recover damages sustained thereto by city's change in the grade. City of Nebraska City v. Northcutt, 45 Neb. 456, 63 N.W. 807 (1895).

Where land owner joins in petition to grade and pave a street, she is not estopped from claiming damages to her property. City of Beatrice v. Leary, 45 Neb. 149, 63 N.W. 370 (1895).

Church property used exclusively for religious purposes is not exempt from special assessments for local improvements. City of Beatrice v. Brethren Church of Beatrice, 41 Neb. 358, 59 N.W. 932 (1894); Von Steen v. City of Beatrice, 36 Neb. 421, 54 N.W. 677 (1893).

16-616 Repealed. Laws 1951, c. 101, § 127.

16-617 Improvement districts; power to establish.

The mayor and council shall have power to make improvements of any street, streets, alley, alleys, or any part of any street, streets, alley or alleys, in said city, a street which divides the city corporate area and the area adjoining the city, or within a county industrial area as defined in section 13-1111 contiguous to such city, and for that purpose to create suitable improvement districts, which shall be consecutively numbered; and such work shall be done under contract. Such districts may include properties within the corporate limits, adjoining the corporate limits, and within county industrial areas as defined in section 13-1111 contiguous to such cities.

Source: Laws 1901, c. 18, § 48, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 114; R.S.1913, § 4916; Laws 1915, c. 86, § 1, p. 225; Laws 1917, c. 95, § 1, p. 254; C.S.1922, § 4084; Laws 1925, c. 50, § 1, p. 191; C.S.1929, § 16-613; Laws 1933, c. 27, § 1, p. 202; C.S.Supp.,1941, § 16-613; R.S.1943, § 16-617; Laws 1967, c. 67, § 3, p. 219; Laws 1969, c. 81, § 2, p. 413; Laws 1979, LB 136, § 1.

City acted within its authority when it made improvements to a street located along the city's corporate limits. Iverson v. City of North Platte, 243 Neb. 506, 500 N.W.2d 574 (1993).

Ordinance is required to state the kind of improvement that is proposed to be made. Danielson v. City of Bellevue, 167 Neb. 809, 95 N.W.2d 57 (1959).

Where city council found property owner failed to file sufficient objection within twenty days of creation of district, it acted judicially, and unless appealed from such finding was final. Hiddleson v. City of Grand Island, 115 Neb. 287, 212 N.W. 619 (1927).

Under prior act, a petition of the property owners was not necessary for the creation of a paving district. Broghamer v. City of Chadron, 107 Neb. 532, 186 N.W. 362 (1922).

Description in paving ordinance was sufficient. Chittenden v. Kibler, 100 Neb. 756, 161 N.W. 272 (1917).

In absence of a limitation in the act granting it authority to issue bonds, the city had power to levy sufficient taxes to pay the same. United States ex rel. Masslich v. Saunders, 124 F. 124 (8th Cir. 1903).

16-617.01 Improvement, defined.

As used in sections 16-617 to 16-649, improvement shall include but shall not be limited to paving, repaving, graveling, grading, curbing, guttering, and the construction and replacement of pedestrian walks, plazas, malls, landscaping, lighting systems and permanent facilities used in connection therewith.

Source: Laws 1967, c. 67, § 2, p. 219.

16-618 Improvement districts; property included.

Any paving district or other improvement district shall include only portions of different streets, or portions of town alleys, or portions of each, which abut or adjoin so that such district, when created, makes up one continuous or extended street or more, except that the district may include a cul de sac, any street, alley, or portion thereof which is closed at one end or which connects

with only one other existing street, alley, or portion thereof. Any paving or other improvement district may include portions of different streets, or portions of different alleys, or portions of each, provided they abut or connect with each other, or provided the several portions abut on pavement or gravel already laid, or any other of aforesaid improvements already laid.

Source: Laws 1917, c. 95, § 1, p. 254; C.S.1922, § 4084; Laws 1925, c. 50, § 1, p. 192; C.S.1929, § 16-613; Laws 1933, c. 27, § 1, p. 202; C.S.Supp.,1941, § 16-613; R.S.1943, § 16-618; Laws 1980, LB 654, § 1.

16-619 Improvement districts; creation; notice.

The mayor and council shall first, by ordinance, create a paving, graveling or other improvement district or districts. The mayor and clerk shall, after the passage, approval, and publication of such ordinance, publish notice of the creation of any such district or districts one time each week for not less than twenty days in a daily or weekly newspaper of general circulation published in the city.

Source: Laws 1915, c. 86, § 1, p. 225; Laws 1917, c. 95, § 1, p. 254; C.S.1922, § 4084; Laws 1925, c. 50, § 1, p. 192; C.S.1929, § 16-613; Laws 1933, c. 27, § 1, p. 202; C.S.Supp.,1941, § 16-613.

Attack on sufficiency of paving petition could be made by error proceedings. Elliott v. City of Auburn, 172 Neb. 1, 108 N.W.2d 328 (1961).

Publication of notice is a mandatory and jurisdictional step. Danielson v. City of Bellevue, 167 Neb. 809, 95 N.W.2d 57 (1959).

16-620 Improvements; objections of property owners; effect.

If the owners of the record title representing more than fifty percent of the front footage of the property abutting or adjoining any continuous or extended street, cul de sac, or alley of the district, or portion thereof which is closed at one end, and who were such owners at the time the ordinance creating the district was published, shall file with the city clerk, within twenty days from the first publication of said notice, written objections to the improvement of a district, said work shall not be done in said district under said ordinance, but said ordinance shall be repealed. If objections are not filed against any district in the time and manner aforesaid, the mayor and council shall forthwith proceed to construct such improvement.

Source: Laws 1917, c. 95, § 1, p. 254; C.S.1922, § 4084; Laws 1925, c. 50, § 1, p. 192; C.S.1929, § 16-613; Laws 1933, c. 27, § 1, p. 202; C.S.Supp.,1941, § 16-613; R.S.1943, § 16-620; Laws 1949, c. 20, § 1, p. 90; Laws 1967, c. 67, § 4, p. 219; Laws 1980, LB 654, § 2.

In passing on sufficiency of paving petition, city council exercises a judicial function. Elliott v. City of Auburn, 172 Neb. 1, 108 N.W.2d 328 (1961).

Property owners are given right to object to kind of materials used in improving street. Danielson v. City of Bellevue, 167 Neb. 809, 95 N.W.2d 57 (1959).

Ordinance creating special improvement district may be repealed before additional steps have been taken. Brasier v. City of Lincoln, 159 Neb. 12, 65 N.W.2d 213 (1954).

16-621 Improvements; materials; kind; petition of landowners; bids; advertisement.

In advertising for bids for paving, repaving, graveling or macadamizing, the mayor and council may provide for bids on different materials and types of construction, and shall in addition provide for asking bids on any material or

materials that may be suggested by petition of owners of the record title representing twenty-five percent of the abutting property owners in a district, if such petition is filed with the city clerk before advertisement for bids is ordered. On opening of bids for paving or repaving in any such district, the mayor and council shall postpone action thereon for a period of not less than ten days. During said period of postponement, the owners of the record title representing a majority of the abutting property owners in a district may file with the city clerk a petition for the use of a particular material for paving for which a bid has been received, in which event a bid on that material shall be accepted and the work shall be done with that material; *Provided*, the above regulations as to advertising for bids and opening of bids and postponing of action thereon and the right of selection of materials shall not apply in case of graveling. In case such owners fail to designate the material they desire used in such paving or repaving, or macadamizing, in the manner and within the time above provided, the mayor and council shall determine upon the material to be used; *Provided*, the mayor and council may in any event, at their option, reject all bids and readvertise if, in their judgment, the public interest requires.

Source: Laws 1917, c. 95, § 1, p. 254; C.S.1922, § 4034; Laws 1925, c. 50, § 1, p. 192; C.S.1929, § 16-613; Laws 1933, c. 27, § 1, p. 202; C.S.Supp.,1941, § 16-613; R.S.1943, § 16-621; Laws 1965, c. 54, § 1, p. 259.

16-621.01 Improvements of streets and alleys; use of salt stabilized base or armor coating, when.

A city of the first class may improve its streets and alleys by the use of salt stabilized base or armor coating in the same manner, to the same extent, and with the same limitations as provided by law for paving or repaving such streets or alleys. All provisions of law respecting paving or repaving by a city of the first class shall apply to any improvements made under the authority of this section.

Source: Laws 1961, c. 45, § 1, p. 177.

16-622 Improvements; assessments; how levied; when delinquent; interest; collection; procedure.

The cost of making such improvements of the streets and alleys within any street improvement district shall be assessed upon the lots and lands in such districts specially benefited thereby in proportion to such benefits. The amounts thereof shall, except as provided in sections 19-2428 to 19-2431, be determined by the mayor and council under the provisions of section 16-615. The assessment of the special tax for the cost of such improvements, except as provided in this section, shall be levied at one time and shall become delinquent in equal annual installments over such period of years, not to exceed twenty, as the mayor and city council may determine at the time of making the levy, the first such installment to become delinquent in fifty days after the date of such levy. Each of said installments, including those for graveling and the construction and replacement of pedestrian walks, plazas, malls, landscaping, lighting systems, and permanent facilities used in connection therewith as hereinafter provided, except the first, shall draw interest at a rate established by the mayor and council not exceeding the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time

of levy until the same shall become delinquent. After the same shall become delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon. Should there be three or more of said installments delinquent and unpaid on the same property the mayor and city council may by resolution declare all future installments on such delinquent property to be due on a future fixed date. The resolution shall set forth the description of the property and the names of its record title owners and shall provide that all future installments shall become delinquent upon the date fixed. A copy of such resolution shall be published one time each week for not less than twenty days in a legal newspaper of general circulation published in the city and after the fixed date such future installments shall be deemed to be delinquent and the city may proceed to enforce and collect the total amount due and all future installments. As to assessments for graveling alone and without guttering or curbing, one-third of the total amount assessed against each lot or parcel of land shall become delinquent in fifty days after the date of the levy of the same, one-third in one year, and one-third in two years.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4917; C.S.1922, § 4085; Laws 1925, c. 50, § 2, p. 193; C.S.1929, § 16-614; Laws 1933, c. 136, § 18, p. 527; C.S.Supp.,1941, § 16-614; R.S.1943, § 16-622; Laws 1953, c. 28, § 1, p. 115; Laws 1955, c. 32, § 1, p. 139; Laws 1959, c. 64, § 1, p. 285; Laws 1959, c. 47, § 1, p. 233; Laws 1967, c. 67, § 5, p. 220; Laws 1972, LB 1213, § 1; Laws 1973, LB 541, § 1; Laws 1980, LB 933, § 10; Laws 1981, LB 167, § 11; Laws 1983, LB 94, § 1.

This section and section 16-669 require that three payments be delinquent before the city may foreclose, and the city is required to pass and publish an acceleration resolution declaring the entire amount due and owing. City of Kearney v. Johnson, 222 Neb. 541, 385 N.W.2d 427 (1986).

Rate of interest on paving assessment was governed by home rule charter and not by this section. State ex rel. Martin v. Cunningham, 158 Neb. 708, 64 N.W.2d 465 (1954).

An unplatted and nonsubdivided tract of land in a city of the first class may be subjected to assessment for special benefits. City of Scottsbluff v. Kennedy, 141 Neb. 728, 4 N.W.2d 878 (1942).

Cities of the first class that adopt a ''home rule'' charter possess no power to remit or cancel interest or penalties on special taxes. Falldorf v. City of Grand Island, 138 Neb. 212, 292 N.W. 598 (1940).

In absence of a limitation in the act granting it authority to issue bonds, the city had power to levy sufficient taxes to pay the same. United States ex rel. Masslich v. Saunders, 124 F. 124 (8th Cir. 1903).

16-623 District paving bonds; interest.

For the purpose of paying the cost of improving the streets, avenues or alleys in any such district, exclusive of intersections of streets or avenues, or spaces opposite alleys therein, the mayor and council shall have power and may, by ordinance, cause to be issued bonds of the city, to be called Street Improvement Bonds of District No. ....., payable in not exceeding twenty years from date, and bearing interest, payable either annually or semiannually, with interest coupons attached. In such cases they shall also provide that said special taxes and assessments shall constitute a sinking fund for the payment of said bonds; *Provided,* the entire cost of improving any such street, avenue or alley, properly chargeable to any lot or land within any such improvement district according to the front footage thereof, may be paid by the owners of such lots or lands within fifty days from the levying of such special taxes, and thereupon such lot or lands shall be exempt from any lien or charge therefor.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4918; C.S.1922,

§ 4086; Laws 1925, c. 50, § 3, p. 194; C.S.1929, § 16-615; Laws 1931, c. 32, § 1, p. 123; C.S.Supp.,1941, § 16-615; R.S.1943, § 16-623; Laws 1967, c. 67, § 6, p. 221; Laws 1969, c. 51, § 27, p. 288.

16-624 Improvement districts; creation upon petition; denial; assessments; bonds.

Whenever the owners of lots or lands abutting upon any street, avenue, or alley within the city, representing three-fourths of the front footage thereon, so that such district when created will make up one continuous or extended thoroughfare or more, shall petition the mayor and council to make improvement of such street, avenue, or alley without cost to the city, and to assess the entire cost of any such improvements in any such street, avenue, or alley, including intersections of streets or avenues and spaces opposite alleys, against the private property within such improvement district or districts, it shall be the duty of the mayor and council to create the proper improvement district or districts, which shall be consecutively numbered, and to improve the same and to proceed in the same manner and form as hereinbefore provided for in other paving and improvement districts; *Provided,* the mayor and council shall have power to levy the entire cost of such improvements of any such street, avenue, or alley, including intersections of streets or avenues and spaces opposite alleys, against the private property within such district, and to issue Street Improvement Bonds of District No. ..... to pay for such improvements in the same manner and form as hereinbefore provided for in other improvement bonds. Such bonds shall be issued to cover the entire cost of so improving such streets or avenues, intersections of the same, and spaces opposite alleys. If the assessments hereinbefore provided for, or any part thereof, shall fail, or for any reason shall be invalid, the mayor and council may make other and further assessments upon such lots or lands as may be required to collect from the same the cost of any improvements properly chargeable thereto, as herein provided. The mayor and city council shall have the discretion to deny the formation of the proposed district when the area to be improved has not previously been improved with a water system, sewer system, and grading of streets. If the mayor and city council should deny a requested improvement district formation, they shall state their grounds for such denial in a written letter to interested parties.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4919; C.S.1922, § 4087; Laws 1925, c. 50, § 4, p. 194; C.S.1929, § 16-616; Laws 1933, c. 27, § 2, p. 203; C.S.Supp.,1941, § 16-616; R.S.1943, § 16-624; Laws 1967, c. 67, § 7, p. 222; Laws 1983, LB 125, § 1.

16-625 Intersections; improvements; railways; duty to pave right-of-way.

The cost of improving the intersections of streets or avenues and spaces opposite alleys in such district, except as hereinbefore specially provided, shall be paid by the city as hereinafter provided; but nothing herein contained shall be construed to exempt any street or other railway company from improving with such material as the mayor and council may order, its whole right-of-way including all space between and one foot beyond the outer rails, at its own cost, whenever any street or avenue shall be ordered improved by the mayor and council of the city as provided by law; *Provided,* no street or other railway

company shall enter upon or occupy any paved street or avenue, within five years after such paving shall have been completed, until it shall pay into the city treasury the original cost of paving between and one foot beyond the outer rails, which sum shall be credited on the special assessment upon the abutted lots; and if the special assessment shall have been paid, then the money shall be paid, by warrant, to the party who has already paid such special assessment.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4920; C.S.1922, § 4088; Laws 1925, c. 50, § 5, p. 195; C.S.1929, § 16-617; R.S. 1943, § 16-625; Laws 1967, c. 67, § 8, p. 223.

16-626 Intersection improvement bonds; amount; interest; warrants; partial payments; final payment; interest; restrictions on work.

For all improvements of the intersections and areas formed by the crossing of streets, avenues or alleys, and one-half of the streets adjacent to real estate owned by the United States, the State of Nebraska, or the city, the assessment shall be made upon all the taxable property of the city; and for the payment of such improvements, the mayor and council or the city commissioners are hereby authorized to issue improvement bonds of the city in such denominations as they deem proper, to be called Intersection Improvement Bonds, payable in not to exceed twenty years from date of said bonds and to bear interest payable annually or semiannually. Such bonds shall not be issued in excess of the cost of said improvements. For the purpose of making partial payments as the work progresses in making the improvements of streets, avenues, alleys or intersections and areas formed by the crossing of streets, avenues, or alleys, or one-half of the streets adjacent to real estate owned by the United States, the State of Nebraska, or the city, warrants may be issued by the mayor and council upon certificates of the engineer in charge showing the amount of the work completed and materials necessarily purchased and delivered for the orderly and proper continuation of the project, in a sum not exceeding ninety-five percent of the cost thereof, and upon completion and acceptance of the work issue a final warrant for the balance of the amount due the contractor, which warrants shall be redeemed and paid upon the sale of bonds authorized by law. The city shall pay to the contractor interest at the rate of eight percent per annum on the amounts due on partial and final payments beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the governing body, and running until the date that the warrant is tendered to the contractor. Nothing herein shall be construed as authorizing the mayor and council to make improvements of any intersections or areas formed by the crossing of streets, avenues or alleys, unless in connection with one or more blocks of any of aforesaid kinds or forms of street improvement of which the improvement of such intersection or areas shall form a part.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4921; Laws 1917, c. 96, § 1, p. 259; C.S.1922, § 4089; Laws 1923, c. 146, § 1, p. 360; Laws 1925, c. 50, § 14, p. 201; C.S.1929, § 16-618; R.S.1943, § 16-626; Laws 1965, c. 55, § 1, p. 261; Laws 1967, c. 67, § 9, p. 223; Laws 1969, c. 51, § 28, p. 289; Laws 1974, LB 636, § 1.

16-627 Intersections; improvement; cost; tax levy.

The cost and expense of improving, constructing, or repairing streets, avenues, alleys and sidewalks, at their intersections, may be included in the special tax levied for the construction or improvement of any one street, avenue, alley or sidewalk, as may be deemed best by the council.

Source: Laws 1901, c. 18, § 75, p. 288; R.S.1913, § 4922; C.S.1922, § 4090; C.S.1929, § 16-619; R.S.1943, § 16-627; Laws 1967, c. 67, § 10, p. 224.

16-628 Improvements; tax; when due.

Such special taxes shall be due and may be collected as the improvements are completed in front of or along or upon any block or piece of ground, or at the time the improvement is entirely completed or otherwise, as shall be provided in the ordinance levying the tax.

Source: Laws 1901, c. 18, § 76, p. 288; R.S.1913, § 4923; C.S.1922, § 4091; C.S.1929, § 16-620.

16-629 Curbs and gutters; authorized; petition; formation of district; bonds.

Curbing and guttering shall not be required or ordered to be laid on any street, avenue or alley not ordered to be paved, repaved, graveled or macadamized, except on a petition of the owners of two-thirds of the front footage of property abutting along the line of that portion of the street, avenue or alley which is to be curbed or guttered.

When such petition is presented, a curbing and guttering district shall be formed, which district shall be governed by the provisions of section 16-630. Any bonds issued on account of such district shall be known as Bonds of Curbing and Guttering District No. ..... .

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4924; C.S.1922, § 4092; Laws 1925, c. 50, § 6, p. 196; C.S.1929, § 16-621; R.S. 1943, § 16-629; Laws 1965, c. 56, § 1, p. 263.

16-630 Curbing and guttering bonds; interest rate; assessments; how levied.

Whenever curbing, or curbing and guttering, is done upon any street, avenue or alley in any paving, repaving, graveling or macadamizing district in which paving or other such improvement aforesaid has been ordered, and the mayor and council shall deem it expedient to do so, they shall have the power and authority, for the purpose of paying the cost of such curbing, or curbing and guttering, to cause to be issued bonds of the city, to be called Curbing and Guttering Bonds of Paving District No. ....., payable in not exceeding ten years from date, bearing interest, payable annually or semiannually, with interest coupons attached. In all cases they shall assess at one time the total cost of such curbing and guttering, or curbing, as the case may be, upon the property abutting or adjacent to the portion of the street, avenue or alley so improved, according to the special benefits. Such assessments shall become delinquent the same as the assessments of special taxes for paving, repaving, graveling or macadamizing purposes, draw the same rate of interest, be subject to the same penalties, and may be paid in the same manner, as special taxes for said purpose. The special tax so assessed shall constitute a sinking fund for the

payment of such bonds and interest, and the bonds shall not be sold for less than their par value.

Source: Laws 1901, c. 18, § 48, LV, p. 267; Laws 1901, c. 19, § 4, p. 315; Laws 1907, c. 13, § 1, p. 119; R.S.1913, § 4925; Laws 1915, c. 87, § 1, p. 226; C.S.1922, § 4093; Laws 1925, c. 50, § 7, p. 196; C.S.1929, § 16-622; R.S.1943, § 16-630; Laws 1945, c. 21, § 1, p. 128; Laws 1969, c. 51, § 29, p. 290.

Under prior act, where street had been reduced to grade, and only limited expense was necessary to complete the work, engineer's estimate, advertisement, etc., for bids was not necessary, and city was permitted to pay for such work out of proper city funds. Hilger v. City of Nebraska City, 97 Neb. 268, 149 N.W. 807 (1914).

16-631 Curbing and guttering; cost; paving bonds may include.

Where an improvement district has been established, an improvement thereon constructed, and curbing or curbing and guttering is therewith constructed, and it becomes necessary to issue and sell street improvement bonds to pay for the cost of construction of same, and also for the cost of construction of the curbing, or curbing and guttering, the mayor and city council may, at their discretion, if they deem the same advisable, include the cost of curbing, or curbing and guttering, with the cost of the other improvement in said paving or other improvement district, and issue bonds for the combined cost of the improvement and curbing, or curbing and guttering, in any of said districts, naming the bonds Street Improvement Bonds of District No. ..... . The amount of money necessary for the payment of said bonds shall be levied upon and collected from abutting and adjacent property, and property specially benefited, the same as is provided for collection of a special tax for the payment of street improvement bonds.

Source: Laws 1915, c. 87, § 1, p. 227; C.S.1922, § 4093; Laws 1925, c. 50, § 7, p. 197; C.S.1929, § 16-622; R.S.1943, § 16-631; Laws 1967, c. 67, § 11, p. 224.

16-632 Improvements; assessments; when authorized; ordinary repairs excepted.

In order to defray the costs and expenses of such improvements or any of them, the mayor and council shall have power and authority to levy and collect special taxes and assessments upon the lots and pieces of ground adjacent to or abutting upon the street, avenue, alley or sidewalk, thus in whole or in part improved or repaired or which may be specially benefited by such improvements; *Provided,* the above provisions shall not apply to ordinary repairs of streets or alleys, and the cost of such repair shall be paid out of the road fund; and the mayor and council are authorized to draw warrants against said fund not to exceed eighty-five percent of the amount levied as soon as levy shall be made by the county board.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4926; C.S.1922, § 4094; Laws 1925, c. 50, § 8, p. 198; C.S.1929, § 16-623; R.S. 1943, § 16-632; Laws 1967, c. 67, § 12, p. 225.

An unplatted and nonsubdivided tract of land in a city of the first class may be subjected to assessment for special benefits. City of Scottsbluff v. Kennedy, 141 Neb. 728, 4 N.W.2d 878 (1942).

Section refers to proceedings for the creation, opening, and improvements of streets by new construction work, and not to ordinary repairs. Hilger v. City of Nebraska City, 97 Neb. 268, 149 N.W. 807 (1914).

16-633 Improvements; assessments against public lands.

If, in any city of the first class, there shall be any real estate belonging to any county, school district, city, municipal or other quasi-municipal corporation abutting upon the street, avenue or alley whereon paving or other special improvements have been ordered, it shall be the duty of the county board, board of education or other proper officers to pay such special taxes; and, in the event of the neglect or refusal of such board or other officers to pay such taxes, or to levy and collect the taxes necessary to pay for such improvements, the city may recover the amount of such special taxes in a proper action. The judgment thus obtained may be enforced in the usual manner, and the signatures of such corporations to all petitions shall have like force and effect as that of other owners.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4927; C.S.1922, § 4095; C.S.1929, § 16-624.

Though church property, used exclusively for church purposes, is exempt from general taxation under the Constitution, such property is not exempt from special assessments for local improvements. City of Beatrice v. Brethren Church of Beatrice, 41 Neb. 358, 59 N.W. 932 (1894).

Officers representing state, county, or school districts, may not sign petition for paving on behalf of the property of the district they represent. Von Steen v. City of Beatrice, 36 Neb. 421, 54 N.W. 677 (1893).

16-634 Improvements; real estate owned by minor or protected person; petition; guardian may sign.

If, in any city of the first class, there shall be any real estate of any minor or protected person, the guardian or conservator of such minor or protected person may sign any petition herein referred to, and such signature shall have like force and effect as that of other owners.

Source: Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4928; C.S.1922, § 4096; C.S.1929, § 16-625; R.S.1943, § 16-634; Laws 1975, LB 481, § 3.

16-635 Improvements; terms, defined; depth to which assessable.

The word lot as used herein shall be taken to mean lot as described and designated upon the record plat of any such city, or within a county industrial area as defined in section 13-1111 contiguous to such city; and in case there is no recorded plat of any such city or county industrial area, it shall mean a lot as described and designated upon any generally recognized map of any such city or county industrial area. The word land shall mean any subdivided or unplatted real estate in such city or county industrial area; *Provided*, if the lots and real estate abutting upon that part of the street ordered improved, as shown upon any recorded plat or map, are not of uniform depth, or, if for any reason, it shall appear just and proper to the mayor and council, they are authorized and empowered to determine and establish the depth to which such real estate shall be charged and assessed with the costs of the improvement, which shall be determined and established according to the benefits accruing to the property by reason of such improvements. Real estate may be so charged and assessed to a greater depth than lots as shown on any such plat or map.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4929; C.S.1922, § 4097; Laws 1925, c. 50, § 9, p. 198; C.S.1929, § 16-626; R.S. 1943, § 16-635; Laws 1967, c. 67, § 13, p. 225; Laws 1969, c. 81, § 3, p. 414.

An unplatted and nonsubdivided tract of land in a city of the first class may be subjected to assessment for special benefits. City of Scottsbluff v. Kennedy, 141 Neb. 728, 4 N.W.2d 878 (1942).

16-636 Improvement districts; land which council may include.

The mayor and council may, in their discretion, include all the real estate to be charged and assessed with the cost of such improvements in the improvement districts hereinbefore provided for, but are not required to do so; and the mayor and council may, in their discretion, in determining whether the requisite majority of owners who are hereinbefore authorized to petition for improvements, and to object to the improvements and to determine the kind of material to be used therefor, have joined in such petition, determination or objections, consider and take into account all the owners of real estate to be charged and assessed with the cost of any of said improvements, or only such as own lots, parts of lots, and real estate which, in fact, abut upon the part of the street, avenue or alley proposed to be so improved. The provisions of this section, in regard to the depth to which real estate may be charged and assessed, shall apply to all special taxes that may be levied by the mayor and council in any such city in proportion to the front footage.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4930; Laws 1917, c. 95, § 1, p. 255; C.S.1922, § 4098; Laws 1925, c. 50, § 10, p. 199; C.S.1929, § 16-627; R.S.1943, § 16-636; Laws 1967, c. 67, § 14, p. 226.

16-637 Improvements; assessments; action to recover.

Any party feeling aggrieved by any special tax or assessment, or proceeding for improvements, may pay the said special taxes assessed and levied upon his, her or its property, or such installments thereof as may be due at any time before the same shall become delinquent, under protest, and with notice in writing to the city treasurer that he, she or it intends to sue to recover the same, which notice shall particularly state the alleged grievance and the ground thereof. Such party shall have the right to bring a civil action within sixty days thereafter, and not later, to recover so much of the special tax paid as he, she or it shows to be illegal, inequitable and unjust, the costs to follow the judgment or to be apportioned by the court, as may seem proper, which remedy shall be exclusive. The city treasurer shall promptly report all such notices to the city council for such action as may be proper. No court shall entertain any complaint that the party was authorized to make and did not make to the city council, sitting as a board of equalization, nor any complaint not specified in said notice fully enough to advise the city of the exact nature thereof, nor any complaint that does not go to the groundwork, equity, and justness of such tax. The burden of proof to show such tax or part thereof invalid, inequitable and unjust shall rest upon the party who brings the suit.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907; c. 13, § 1, p. 111; R.S.1913, § 4931; C.S.1922, § 4099; Laws 1925, c. 50, § 11, p. 199; C.S.1929, § 16-628; R.S.1943, § 16-637; Laws 1967, c. 67, § 15, p. 226.

A special tax assessment which violates the federal Constitution is illegal, and thus a claim that a special tax assessment violates the federal Constitution can be raised and adjudicated in claims made under this section. Francis v. City of Columbus, 267 Neb. 553, 676 N.W.2d 346 (2004).

As a prerequisite to bringing suit for a refund under this section, a party must pay the tax under protest before it becomes delinquent. Francis v. City of Columbus, 267 Neb. 553, 676 N.W.2d 346 (2004).

This section provides an adequate remedy for adjudicating a claim that a special tax assessment violates the federal Constitution. Francis v. City of Columbus, 267 Neb. 553, 676 N.W.2d 346 (2004).

City may not take property for street improvement by eminent domain, and then nullify the value of the property taken by levying local assessment for the improvement in excess of the special benefits conferred. Hayman v. City of Grand Island, 135 Neb. 873, 284 N.W. 737 (1939).

Where there is a variation between the established gradeline and the permanent street improvement, failure of property owner, who knows such fact while the work is progressing, to file timely objections to the assessment because of such defect, will estop him from raising the question under this section by injunction. Kister v. City of Hastings, 108 Neb. 476, 187 N.W. 909 (1922).

16-638 Repealed. Laws 1963, c. 339, § 1.

16-639 Repealed. Laws 1963, c. 339, § 1.

16-640 Repealed. Laws 1963, c. 339, § 1.

16-641 Repealed. Laws 1963, c. 339, § 1.

16-642 Repealed. Laws 1963, c. 339, § 1.

16-643 Repealed. Laws 1963, c. 339, § 1.

16-644 Repealed. Laws 1963, c. 339, § 1.

16-645 Damages caused by construction; procedure.

In all cases of damages arising from the creation or widening of new streets, avenues, or alleys, from the appropriation of property for sewers, parks, parkways, public squares, public heating plants, power plants, gas works, electric light plants, waterworks, or market places, and from change of grade in streets, avenues, or alleys, the damages sustained shall be ascertained and determined as provided in sections 76-704 to 76-724, except as to property specifically excluded by section 76-703 and as to which sections 19-701 to 19-707 or the Municipal Natural Gas System Condemnation Act is applicable.

Source: Laws 1901, c. 18, § 53, p. 271; Laws 1903, c. 19, § 12, p. 243; R.S.1913, § 4937; C.S.1922, § 4105; C.S.1929, § 16-634; R.S. 1943, § 16-645; Laws 1951, c. 101, § 52, p. 471; Laws 2002, LB 384, § 23.

Cross References

Municipal Natural Gas System Condemnation Act, see section 19-4624.

Objections as to lack of notice were waived by appeal from award of appraisers. Webber v. City of Scottsbluff, 155 Neb. 48, 50 N.W.2d 533 (1951).

Damage for opening of street was separate cause of action from annexation of territory. City of Alliance v. Cover-Jones Motor Co., 154 Neb. 900, 50 N.W.2d 349 (1951).

The owner has right of appeal from board's decision to the district court. Stuhr v. City of Grand Island, 123 Neb. 369, 243 N.W. 80 (1932), vacated on rehearing, 124 Neb. 285, 246 N.W. 461 (1933).

Property owner is entitled to a jury trial to determine his damages. Grantham v. City of Chadron, 20 F.2d 40 (8th Cir. 1927).

16-646 Special taxes; lien upon property; collection.

In every case of the levy of special taxes, the same shall be a lien on the property on which levied from date of levy and shall be due and payable to the city treasurer thirty days after such levy when not otherwise provided; and, at the time of the next certification for general revenue purposes to the county clerk, if not previously paid, the special taxes, except paving, repaving, graveling, macadamizing, and curbing or curbing and guttering shall be certified to the county clerk and by him be placed upon the tax list and be collected as other real estate taxes are collected, and be paid over to the city treasurer; and paving, repaving, graveling, macadamizing and curbing, or curbing and gutter-

ing taxes may be so certified and collected by the county treasurer at the option of said city.

Source: Laws 1901, c. 18, § 77, p. 288; Laws 1903, c. 19, § 14, p. 245; R.S.1913, § 4938; Laws 1917, c. 95, § 1, p. 255; C.S.1922, § 4106; Laws 1925, c. 50, § 12, p. 200; C.S.1929, § 16-635.

Special assessment was a lien at time of foreclosure, and could have been included in tax foreclosure proceeding. Dent v. City of North Platte, 148 Neb. 718, 28 N.W.2d 562 (1947).

16-647 Special taxes; payment by part owner.

It shall be sufficient in any case to describe the lot or piece of ground as the same is platted and recorded although the same belongs to several persons; but, in case any lot or piece of ground belongs to different persons, the owner of any part thereof may pay his portion of the tax on such lot or piece of ground, and his proper share may be determined by the city treasurer.

Source: Laws 1901, c. 18, § 78, p. 289; R.S.1913, § 4939; C.S.1922, § 4107; C.S.1929, § 16-636.

16-648 Money from special assessments; how used.

All money received from special assessments may be applied to pay for the improvement for which assessed, or applied to reimburse the fund of the city from which the cost of the improvement may have been made.

Source: Laws 1901, c. 18, § 79, p. 289; Laws 1903, c. 19, § 15, p. 245; R.S.1913, § 4940; C.S.1922, § 4108; C.S.1929, § 16-637.

16-649 Improvements; contracts; bids; requirement.

All improvements of any streets, avenues or alleys in the city for which, or any part thereof, a special tax shall be levied, shall be done by contract with the lowest responsible bidder to be determined by the council.

Source: Laws 1901, c. 18, § 74, p. 288; R.S.1913, § 4941; C.S.1922, § 4109; Laws 1925, c. 50, § 13, p. 201; C.S.1929, § 16-638; R.S.1943, § 16-649; Laws 1967, c. 67, § 16, p. 227.

Engineer may estimate total work and need not do so by item, and where bids are called for on four different kinds of material, and the contract is let for one of the kinds shown in the advertisement for bids, such estimate and advertisement for bids are sufficient. Wurdeman v. City of Columbus, 100 Neb. 134, 158 N.W. 924 (1916).

16-650 Public improvements; acceptance by city engineer; approval or rejection by council.

When any improvement is completed according to contract, it shall be the duty of the city engineer to carefully inspect the same; and, if the improvement is found to be properly done, such engineer shall accept the same, and forthwith report his acceptance thereof to the board of public works or mayor, who shall report the same to the council with recommendation that the same be approved or disapproved; and the city council may confirm or reject such acceptance. When the ordinance levying the tax makes the same due as the improvement is completed in front of or along any block or piece of ground, the engineer may accept the same in sections from time to time, if found to be done according to the contract, reporting his acceptance as in other cases.

Source: Laws 1901, c. 18, § 66, p. 278; R.S.1913, § 4942; C.S.1922, § 4110; C.S.1929, § 16-639.

16-651 Grading and grading districts.

Whenever the owners of lots and lands abutting upon any street or alley, or part thereof, within the city, representing two-thirds of the feet front abutting upon such part of street or alley desired to be graded, shall petition the council to grade such street or alley, or part thereof, without cost to the city, the mayor and council shall order the grading done and assess the costs thereof against the property abutting upon such street or alley or such part thereof so graded. For this purpose the mayor and council shall create suitable grading districts, which shall be consecutively numbered.

Source: Laws 1901, c. 18, § 73, p. 285; R.S.1913, § 4943; C.S.1922, § 4111; C.S.1929, § 16-640.

Petition signed as required is necessary prerequisite. City of South Omaha v. Tighe, 67 Neb. 572, 93 N.W. 946 (1903).

16-652 Grading; assessments; when delinquent.

The cost of grading the streets and alleys within any such grading district shall be assessed upon the lots and lands specially benefited thereby in such district in proportion to such benefits, to be determined by the mayor and council under the provisions of section 16-615. The assessment of special taxes for grading purposes herein provided for shall be levied at one time and shall become delinquent as follows: One-fifth of the total amount shall become delinquent in fifty days after such levy; one-fifth in one year; one-fifth in two years; one-fifth in three years; one-fifth in four years. Each of said installments, except the first, shall draw interest at a rate not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of the levy aforesaid until the same shall become delinquent; and, after the same shall become delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon, as in the case of other special taxes. The cost of grading the intersections of streets and spaces opposite alleys in any such district shall be paid by the city out of the general fund of such city.

Source: Laws 1901, c. 18, § 73, p. 286; R.S.1913, § 4943; C.S.1922, § 4111; C.S.1929, § 16-640; R.S.1943, § 16-652; Laws 1980, LB 933, § 11; Laws 1981, LB 167, § 12.

16-653 Grading bonds; interest rate.

For the purpose of paying the costs of grading the streets and alleys in such district, exclusive of the intersection of streets and spaces opposite alleys therein, the mayor and council shall have power, and may, by ordinance, cause to be issued bonds of the city, to be called District Grading Bonds of District No. ....., payable in not exceeding five years from date and to bear interest, payable annually or semiannually, with interest coupons attached, and that as nearly as possible an equal amount of the bonds shall be made to mature each year, and in such case shall also provide that such special taxes and assessments shall constitute a sinking fund for the payment of said bonds and interest; *Provided,* the entire cost of grading any such street or alley properly chargeable to any lots or lands within any such grading district, according to feet front thereof, may be paid by the owner of such lots or lands within fifty

days from the levy of such special taxes; and thereupon such lot or land shall be exempt from any lien or charge therefor.

Source: Laws 1901, c. 18, § 73, p. 285; R.S.1913, § 4943; C.S.1922, § 4111; C.S.1929, § 16-640; R.S.1943, § 16-653; Laws 1945, c. 21, § 2, p. 129; Laws 1969, c. 51, § 30, p. 290.

16-654 Grading upon petition; assessments; bonds.

Whenever the owner of lots and lands abutting upon any street or avenue, alley or lane, or part thereof, representing three-fourths of the feet front abutting upon any such street or avenue, alley or lane, or part thereof, shall petition the mayor and council to grade the same, including the intersections of streets, avenues, or lanes and spaces opposite alleys and lanes, without cost to the city, and to assess the entire cost of grading such street, avenue, alley or lane or part thereof, including the intersections of streets, avenues or lanes and spaces opposite alleys or lanes, against the lots and lands abutting upon such street, avenue, alley or lane, or part thereof, so graded, thereupon the mayor and council shall create grading districts, make assessments, issue bonds, and proceed in the same manner as in cases of grading hereinbefore provided; *Provided,* bonds shall be issued to cover the entire cost of grading both the streets, avenues or alleys, and the intersections of streets or avenues and spaces opposite alleys.

Source: Laws 1901, c. 18, § 73, p. 287; R.S.1913, § 4943; C.S.1922, § 4111; C.S.1929, § 16-640.

16-655 Grading bonds; amount; sale; damages; how ascertained.

The aggregate amount of such bonds issued in any one year shall not exceed fifty thousand dollars, and shall not be sold for less than their par value. If any assessment or part thereof shall fail or for any reason be invalid, the mayor and council may make such further assessments upon said lots or lands, as may be required, and collect from the owners the cost of any grading properly chargeable thereto, as herein provided; *Provided,* no street, avenue, alley or lane shall be so graded until the damages to property owners, if any, shall be ascertained by three disinterested freeholders to be appointed by the mayor and council and the proceedings to be the same in all respects as provided in section 16-615 for cases of change of grade.

Source: Laws 1901, c. 18, § 73, p. 287; R.S.1913, § 4943; C.S.1922, § 4111; C.S.1929, § 16-640.

Council is without power to grade or change the grade of a street, including the sidewalk space, until damages are ascertained and paid. Shewell v. City of Nebraska City, 52 Neb. 138, 71 N.W. 952 (1897).

(c) VIADUCTS

16-656 Repealed. Laws 1949, c. 28, § 20.

16-657 Repealed. Laws 1949, c. 28, § 20.

16-658 Repealed. Laws 1949, c. 28, § 20.

16-659 Repealed. Laws 1949, c. 28, § 20.

16-660 Repealed. Laws 1949, c. 28, § 20.

(d) SIDEWALKS

16-661 Construction and repair; materials.

The mayor and council may construct and repair, or cause and compel the construction and repair, of sidewalks in such city of such material and in such manner as they may deem necessary.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4945; C.S.1922, § 4114; C.S.1929, § 16-643.

16-662 Construction and repair; failure of property owner; power of city.

In case the owner or owners of any lot, lots or lands abutting on any street or avenue, or part thereof, shall fail to construct or repair any sidewalk in front of his, her or their lot, lots or lands within the time and in the manner as directed and requested by the mayor and council, after having received due notice to do so, they shall be liable for all damages or injury occasioned by reason of the defective or dangerous condition of any sidewalk; and the mayor and council shall have power to cause such sidewalk to be constructed or repaired and assess the cost thereof against such property.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4946; C.S.1922, § 4115; C.S.1929, § 16-644.

16-663 Maintenance; snow and ice removal; duty of landowner; violation of ordinance; cause of action for damages.

The mayor and city council shall have power to provide for keeping the sidewalks clean and free from obstructions and accumulations of snow, ice, mud and slush, and may provide for the assessment and collection of taxes on real estate and for the sale and conveyance thereof to pay expenses of keeping the sidewalks adjacent to such real estate clean and free from obstructions and accumulations of snow, ice, mud and slush, and the mayor and city council shall also have power to provide that the violation of the ordinance relative thereto shall give rise to a cause of action for damages in favor of any person who is injured by the failure or neglect of the owner and occupant of the real estate to comply with the ordinance in question.

Source: Laws 1901, c. 18, § 50, p. 268; R.S.1913, § 4947; C.S.1922, § 4116; C.S.1929, § 16-645; R.S.1943, § 16-663; Laws 1963, c. 64, § 1, p. 263.

16-664 Construction; cost; assessment; levy; when delinquent; payment.

Such city shall have power to provide for the laying of permanent sidewalks. Upon the petition of any freeholder who desires to build such a permanent sidewalk, the mayor and council may order the same to be built, and that the cost of the same until paid shall be a perpetual lien upon the real estate along which the freeholder desires such sidewalk to be constructed, and the city may assess and levy the costs of same against such real estate in the manner provided by law. The total cost of the building of the permanent sidewalk shall be levied at one time upon the property along which such permanent sidewalk is to be built, and become delinquent as herein provided: One-seventh of the total cost shall become delinquent in ten days after such levy; one-seventh in

one year; one-seventh in two years; one-seventh in three years; one-seventh in four years; one-seventh in five years; one-seventh in six years. Each of such installments, except the first, shall draw interest at a rate of not exceeding the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of the levy aforesaid, until the same shall become delinquent; and after the same shall become delinquent interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon as in the case of other special taxes. The council shall pay for the building of such permanent sidewalk out of the general fund. The mayor and council may pass an ordinance to carry into effect the provisions of this section.

Source: Laws 1901, c. 18, § 121, p. 303; R.S.1913, § 4948; C.S.1922, § 4117; C.S.1929, § 16-646; R.S.1943, § 16-664; Laws 1963, c. 65, § 1, p. 264; Laws 1965, c. 57, § 1, p. 264; Laws 1980, LB 933, § 12; Laws 1981, LB 167, § 13.

Cities of the first class that adopt a ''home rule'' charter possess no power to remit or cancel interest or penalties on special taxes. Falldorf v. City of Grand Island, 138 Neb. 212, 292 N.W. 598 (1940).

16-665 Ungraded streets; construction of sidewalks.

The mayor and council may provide for the laying of permanent sidewalks and of temporary plank sidewalks upon the natural surface of the ground without regard to the grade, on streets not permanently improved, and provide for the assessment of the cost therein on the property in front of which the same shall be laid.

Source: Laws 1901, c. 18, § 48, VII, p. 246; R.S.1913, § 4949; C.S.1922, § 4118; C.S.1929, § 16-647.

16-666 Assessments; levy; certification; collection.

Assessments made under sections 16-250 and 16-665 shall be made and assessed in the following manner:

(1) Such assessments shall be made by the council at any meeting by a resolution fixing the costs of the construction or repair of such work along the lot adjacent thereto as a special assessment thereon, the amount charged against the same, which, with the vote thereon by yeas and nays, shall be spread at length upon the minutes; and notice of the time of holding such meeting and the purpose for which it is to be held shall be published in some newspaper published and of general circulation in the city at least ten days before the same shall be held, or in lieu thereof, personal service may be had upon persons owning or occupying property to be assessed;

(2) All such assessments shall be known as special assessments for improvements, and with the cost of notice shall be levied and collected as a special tax, in addition to the taxes for general revenue purposes, subject to the same penalties and collected in like manner as other city taxes; but such special assessment shall draw interest at a rate not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature; and the same shall be certified to the county clerk at the same time as the next certification for general revenue purposes.

Source: Laws 1901, c. 18, § 48, VIII, p. 246; Laws 1903, c. 19, § 8, p. 240; R.S.1913, § 4950; C.S.1922, § 4119; C.S.1929, § 16-648; R.S. 1943, § 16-666; Laws 1980, LB 933, § 13; Laws 1981, LB 167, § 14.

(e) WATER AND SEWER DISTRICTS

16-667 Creation of districts; regulations.

The city may, by ordinance, lay off the city into suitable districts for the purpose of establishing therein a system of sewerage and drainage and water service; to provide such systems and regulate the construction, repair, and use of the same; to compel all proper connections therewith and branches from other streets, avenues, and alleys, and from private property; and to provide a penalty not to exceed one hundred dollars for any obstruction or injury to any sewer or drain or water main or part thereof, or for failure to comply with the regulations therefor prescribed.

Source: Laws 1901, C. 18, § 48, XXVII, p. 251; Laws 1905, c. 24, § 1, p. 247; Laws 1911, c. 14, § 1, p. 129; Laws 1913, c. 161, § 1, p. 500; R.S.1913, § 4951; C.S.1922, § 4120; C.S.1929, § 16-649; Laws 1933, c. 136, § 19, p. 528; C.S.Supp.,1941, § 16-649.

This section as it existed in 1975 authorized a city of the first class to create a water district to extend water service within the city limit without giving notice of the creation of the district to property owners affected. First Assembly of God Church v. City of Scottsbluff, 203 Neb. 452, 279 N.W.2d 126 (1979).

To the extent the opinion in Matzke v. City of Seward, 193 Neb. 211, 226 N.W.2d 340 (1975), may imply that a city of the first class had no authority to create a water extension district under this section and is in conflict with this case, it is overruled. First Assembly of God Church v. City of Scottsbluff, 203 Neb. 452, 279 N.W.2d 126 (1979).

Sections 16-667 to 16-670 provide procedures for construction and financing for water mains in a water district. Matzke v. City of Seward, 193 Neb. 211, 226 N.W.2d 340 (1975).

A city of the first class has statutory authority to create water district and to levy assessments for the payment of the cost thereof. Wiborg v. City of Norfolk, 176 Neb. 825, 127 N.W.2d 499 (1964).

Power to construct local improvements and levy special assessments is strictly construed. Besack v. City of Beatrice, 154 Neb. 142, 47 N.W.2d 356 (1951).

It is the duty of a city issuing warrants in payment of special improvements to create a fund for payment of the warrants and to collect special assessments to retire the same, and upon failure to do so, the warrants become general obligations of the city. Miller v. City of Scottsbluff, 133 Neb. 547, 276 N.W. 158 (1937).

City has independent and complete authority to erect, extend, or improve and maintain a sewer system and to issue bonds in payment thereof, even though such bonds are not the general obligation of the city. State ex rel. City of Columbus v. Price, 127 Neb. 132, 254 N.W. 889 (1934).

Where a city has power to contract for pipe, but the manner of so exercising the contract is irregular, and where such city purchases and retains such pipe, there being no fraud shown, such contract is not ultra vires and a taxpayer will not be permitted by suit to prevent the council's allowance of the seller's claim therefor. Stickel Lumber Company v. City of Kearney, 103 Neb. 636, 173 N.W. 595 (1919).

16-667.01 Prohibit formation of district; procedure.

Upon formation by city ordinance of sewerage, drainage, and water service districts as described by section 16-667, the city shall mail copies of such city ordinance and this section to the owners of the record title of any property abutting upon the streets, avenues, or alleys, or parts thereof, which are within such district within twenty calendar days of the passage of the ordinance. The owners of the record title representing more than fifty percent of the front footage of the property abutting upon the streets, avenues, or alleys, or parts thereof which are within such a proposed district may, by petition, stop formation of such a district. Such written protest shall be submitted to the city council or clerk within thirty calendar days after publication of notice concerning the ordinance in a newspaper of general circulation in the city. Publication of such notice shall follow within ten calendar days after passage of such an ordinance. The mailing notice requirement of this section shall be satisfied by mailing a copy of the ordinance and this section by United States mail to the last-known address of the owners of the record title.

Source: Laws 1901, c. 18, § 48, XXVII, p. 251; Laws 1905, c. 24, § 1, p. 247; Laws 1911, c. 14, § 1, p. 129; Laws 1913, c. 161, § 1, p. 500; R.S.1913, § 4951; C.S.1922, § 4120; C.S.1929, § 16-649; Laws 1933, c. 136, § 19, p. 528; C.S.Supp.,1941, § 16-649; R.S.1943, § 16-667.01; Laws 1981, LB 31, § 1.

16-667.02 Districts; formation; sewer or water mains; special assessments; use of other funds.

Upon formation of a district as provided in section 16-667.01, the mayor and council may order sewer or water mains to be laid in such district and the costs, to the extent of the special benefit, assessed against the lots and parcels of real estate in such district. The cost of sewer or water mains in excess of collections from special assessments under this section may be paid out of the sewer fund or water fund, or, if money in such fund is insufficient, out of the general fund of the city.

Source: Laws 1977, LB 483, § 2.

16-667.03 Sewer or water mains; failure to make connections; order; costs assessed.

If, after ten days' notice by certified mail or publication in a newspaper of general circulation, a property owner fails to make such connections and comply with such regulations as the council may order in accordance with section 16-667.02, the council may order such connection be made, and assess the cost thereof against the property so benefited.

Source: Laws 1977, LB 483, § 3.

16-668 Repealed. Laws 1977, LB 483, § 6.

16-669 Assessments; when delinquent; interest; future installments; collection.

(1) Except as provided in subsection (2) of this section, the assessment of special taxes for sewer or water improvements in a district shall be levied at one time and shall become delinquent in equal annual installments over a period of years equal to the number of years for which the bonds for such project were issued pursuant to section 16-670. The first installment becomes delinquent fifty days after the making of such levy. Each installment, except the first, shall draw interest from the time of such levy until such installment becomes delinquent. After an installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon until such installment is collected and paid. Such special taxes shall be collected and enforced as in cases of other special taxes and shall be a lien on such real estate from and after the date of the levy thereof. If three or more installments are delinquent and unpaid on the same property, the city council may by resolution declare all future installments on such delinquent property to be due on a future fixed date. The resolution shall set forth the description of the property and the names of its record title owners and shall provide that all future installments shall become delinquent upon the date fixed. A copy of such resolution shall be published one time each week for not less than twenty days in a legal newspaper of general circulation published in the city and after the fixed date such future installments shall be deemed to be delinquent and the city may proceed to enforce and collect the total amount due and all future installments.

(2) If the city incurs no new indebtedness pursuant to section 16-670 for sewer or water improvements in a district, the assessment of special taxes for sewer or water improvements shall be levied at one time and shall become

delinquent in equal annual installments over such period of years as the city council determines at the time of making the levy to be reasonable and fair.

Source: Laws 1901, c. 18, § 48, XXVII, p. 252; Laws 1905, c. 24, § 1, p. 248; Laws 1911, c. 14, § 1, p. 130; Laws 1913, c. 161, § 1, p. 501; R.S.1913, § 4951; C.S.1922, § 4120; C.S.1929, § 16-649; Laws 1933, c. 136, § 19, p. 528; C.S.Supp.,1941, § 16-649; R.S.1943, § 16-669; Laws 1953, c. 29, § 1, p. 116; Laws 1955, c. 33, § 1, p. 140; Laws 1959, c. 64, § 2, p. 286; Laws 1969, c. 51, § 31, p. 291; Laws 1977, LB 483, § 4; Laws 1980, LB 933, § 14; Laws 1981, LB 167, § 15; Laws 2005, LB 161, § 4.

This section and section 16-622 require that three payments be delinquent before the city may foreclose, and the city is required to pass and publish an acceleration resolution declaring the entire amount due and owing. City of Kearney v. Johnson, 222 Neb. 541, 385 N.W.2d 427 (1986).

16-670 Bonds; amount; interest; maturity; special assessments; revenue bonds.

For the purpose of paying the cost of any such sewer or water improvements in any such district, the city council shall have the power and may by ordinance cause bonds of the city to be issued called District Sewer (Water) Bonds of District No. ....., payable in not exceeding twenty years from date and to bear interest payable annually or semiannually with interest coupons attached. All special assessments which may be levied upon properties specially benefited by such work or improvements shall, when collected, be set aside and constitute a sinking fund for the payment of the interest and principal of such bonds. The cost of such sewer or water improvements chargeable by special assessment to the private property within such district may be paid by the owners of such property within fifty days from the levy of such special assessments, and thereupon such property shall be exempt from any lien for the special assessment. Such bonds shall not be sold for less than their par value and if any assessment or any part thereof fails or for any reason is invalid, the city council may make such other and further assessments on such lots or lands as may be required to collect from the lots or lands the cost of any such sewer or water improvements properly chargeable to the lots or lands as provided in this section. If such assessments or any part thereof fails or for any reason is invalid, the city council may, without further notice, make such other and further assessments on such lots or lands as may be required to collect from the lots or lands the cost of such improvement properly chargeable to the lots or lands as provided in this section. Nothing in this section shall be construed to prevent a city from paying the cost of sewer or water improvements from revenue bonds as otherwise provided by law. When revenue bonds are issued to pay the cost of sewer or water improvements, the city council may provide that the collections from any related special assessment district shall be allocated to the gross revenue of the appropriate utility system.

Source: Laws 1901, c. 18, § 48, XXVII, p. 252; Laws 1905, c. 24, § 1, p. 248; Laws 1911, c. 14, § 1, p. 130; Laws 1913, c. 161, § 1, p. 501; R.S.1913, § 4952; C.S.1922, § 4121; C.S.1929, § 16-650; Laws 1937, c. 25, § 1, p. 144; C.S.Supp.,1941, § 16-650; R.S.1943, § 16-670; Laws 1969, c. 82, § 1, p. 415; Laws 1969, c. 51, § 32, p. 292; Laws 1977, LB 483, § 5; Laws 2005, LB 161, § 5.

16-671 Construction costs; warrants; power to issue; amount; interest; payment; fund; created.

For the purpose of paying the cost of construction of such sewer mains or water mains, or both, the mayor and council shall have power to issue warrants in amounts not to exceed the total sum of the special assessments above provided for, which said warrants shall bear interest at such rate as the mayor and council shall order. When there are no funds immediately available for the payment thereof, said warrants shall be registered in the manner provided for the registration of other warrants, and called and paid whenever there are funds available for the purpose in the manner provided for the calling and paying of other warrants. For the purpose of paying said warrants and the interest thereon from the time of their registration until paid, the special assessments above provided for shall be kept as they are paid and collected in a fund to be designated and known as the Sewer and Water Extension Fund into which all money levied for such improvements shall be paid as collected, and out of which all warrants issued for such purposes shall be paid.

Source: Laws 1913, c. 161, § 1, p. 502; R.S.1913, § 4952; C.S.1922, § 4121; C.S.1929, § 16-650; Laws 1937, c. 25, § 1, p. 145; C.S.Supp.,1941, § 16-650; R.S.1943, § 16-671; Laws 1969, c. 82, § 2, p. 416; Laws 1969, c. 51, § 33, p. 293.

16-671.01 Partial payments, authorized; interest; rate; warrants; issuance; payment.

For the purpose of making partial payments as the work progresses, warrants may be issued by the mayor and city council upon certificates of the engineer in charge showing the amount of work completed and materials necessarily purchased and delivered for the orderly and proper continuation of the project in a total amount not to exceed ninety-five percent of the cost thereof and upon the completion and acceptance of the work issue a final warrant for the balance of the amount due the contractor. The city shall pay to the contractor interest at the rate of eight percent per annum on the amounts due on partial and final payments beginning forty-five days after the certification of the amounts due by the engineer in charge and approval of the governing body, and running until the date that the warrant is tendered to the contractor. The warrants shall be redeemed and paid out of the proceeds received from the special assessments levied under the provisions of section 16-669, or out of the proceeds of the bonds or warrants issued under the provisions of sections 16-670 and 16-671. The warrants shall draw such interest as shall be provided in the warrants from the date of registration until paid.

Source: Laws 1955, c. 34, § 1, p. 142; Laws 1969, c. 51, § 34, p. 293; Laws 1974, LB 636, § 2.

16-672 Assessments; equalization; reassessment.

Special taxes may be levied by the mayor and council for the purpose of paying the cost of constructing sewers or drains within the city. Such tax shall be levied on the real estate lying and being within the sewerage district in which such sewers or drains may be situated to the extent of benefits to such property by reason of such improvement. The benefits to such property shall be determined by the council sitting as a board of equalization, after notice to property owners as in other cases of special assessment provided. If the council, sitting as such board of equalization, shall find such benefits to be equal and uniform, such levy may be according to the front foot of the lots or

real estate within such sewerage district, according to such other rule as the council sitting as such board of equalization may adopt for the distribution or adjustment of such cost upon the lots or real estate in such district benefited by such improvement. All taxes or assessments made for sewerage or drainage purposes shall be collected in the same manner as other special assessments and shall be subject to the same penalty. And where sewers are constructed and any assessments to cover the costs thereof shall be declared void, or doubts exist as to the validity of such assessment, the mayor and council, for the purpose of paying the cost of such improvement, are hereby authorized and empowered to make a reassessment of such costs on lots and real estate lying and being within the sewerage district in which such sewer may be situated, to the extent of the benefits to such property by reason of such improvement. Such reassessment shall be made substantially in the manner provided for making original assessments of like nature as herein provided; and any sums which may have been paid toward said improvement, upon any lots or real estate included in such assessment, shall be applied under the direction of the council to the credit of the persons and property on account of which the same was paid. In case the credits shall exceed the sum reassessed against such persons and property, as herein provided for, the council shall cause such excess, with lawful interest, to be refunded to the party who made payment thereof. The taxes so reassessed and not paid under a prior assessment shall be collected and enforced in the same manner as other special taxes, and shall be subject to the same penalty.

Source: Laws 1901, c. 18, § 67, p. 279; R.S.1913, § 4953; C.S.1922, § 4122; C.S.1929, § 16-651.

Special taxes cannot be levied upon property outside the district and within another district to pay cost of sewer construction. Besack v. City of Beatrice, 154 Neb. 142, 47 N.W.2d 356 (1951).

Special taxes to pay the cost of sewers may be levied only on real estate within a sewer district and city. City of Scottsbluff v. Acton, 135 Neb. 636, 283 N.W. 374 (1939).

(f) STORM SEWER DISTRICTS

16-672.01 Storm sewer districts; ordinance; contents.

Supplemental to any existing law on the subject, whenever the mayor and city council of any city of the first class in Nebraska, shall deem it advisable or necessary to construct storm water sewers and appurtenances in any section of the city and the extraterritorial zoning jurisdiction of the city as established pursuant to section 16-902, together with outlets for the same, the advisability and necessity thereof shall be declared in a proposed ordinance, which ordinance 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. The ordinance shall refer to the plans and specifications thereof which shall have been made and filed with the municipal clerk by the city engineer before publication of such ordinance. Such city engineer shall also make and file, prior to the publication of such ordinance, an estimate of the total cost of the proposed improvement, which shall be stated in the ordinance. The mayor and city council shall have power to assess, to the extent of special benefits, the cost of such portions of the improvements as are local improvements, upon properties found specifically benefited thereby; and the ordinance shall state the outer

boundaries of the district or districts in which it is proposed to make special assessments.

Source: Laws 1961, c. 46, § 1, p. 177; Laws 2005, LB 234, § 1.

16-672.02 Ordinance; hearing; notice.

Notice of the time when any such ordinance shall be set for consideration before the mayor and city council shall be given by at least two publications in a newspaper published in the city, or published in the county in which said city is located and of general circulation in said city, which publication shall state the entire wording of the ordinance. The last publication shall be not less than five days nor more than two weeks prior to the time set for the hearing of objections to the passage of any such ordinance, at which hearing the owners of real property located in said improvement district and which might become subject to assessment for the cost of the contemplated improvement may appear and make objections to the improvement. Thereafter the ordinance may be amended and passed or passed as proposed.

Source: Laws 1961, c. 46, § 2, p. 178.

16-672.03 Ordinance; protest; filing; effect.

If a written protest signed by owners of the property located in said improvement district and representing a majority of the front footage which may become subject to assessment for the cost of the improvement, be filed with the municipal clerk within three days before the date of the meeting for the consideration of such ordinance, such ordinance shall not be passed.

Source: Laws 1961, c. 46, § 3, p. 178.

16-672.04 Ordinance; adoption.

Upon compliance with sections 16-672.01 to 16-672.03, the mayor and city council may, by ordinance, order the making and construction of the improvements provided for in section 16-672.01. To adopt such ordinance, a majority of the whole number of members elected to the city council shall be required; *Provided,* that if the vote be a tie, the mayor may vote to break such tie.

Source: Laws 1961, c. 46, § 4, p. 179.

16-672.05 Construction; notice to contractors, when; contents; bids; acceptance.

After ordering any such improvements as provided in section 16-672.01, the mayor and city council may enter into a contract for the construction of the same in one or more contracts, but no work shall be done or contract let, if the estimated cost of the improvements, as determined by the city engineer, is in excess of two thousand dollars, until notice to contractors has been published once each week for three weeks in a newspaper published in the city, or if there be no newspaper published in said city, then in some newspaper of general circulation published in the county wherein such city is located. The notice shall state the extent of the work, and the kind of materials to be bid upon, including in such notice all kinds of material mentioned in the ordinance specified in section 16-672.01, and the time when bids will be received, and may set forth the amount of the engineer's estimate of the cost of such improvements. The work provided for in sections 16-672.01 to 16-672.11, shall

be done under a written contract with the lowest responsible bidder on the material selected after the bids are opened and in accordance with the requirements of the plans and specifications. The mayor and city council may reject any or all bids received and advertise for new bids in accordance herewith.

Source: Laws 1961, c. 46, § 5, p. 179; Laws 1969, c. 82, § 3, p. 416; Laws 1975, LB 112, § 1.

16-672.06 Construction; acceptance; notice of assessments.

After the completion of any such work in the construction of said public improvements, the city engineer shall file with the municipal clerk a certificate of acceptance, which acceptance shall be approved by the mayor and city council by ordinance. The mayor and city council shall then require the city engineer to make a complete statement of all the costs of such improvement and a plat of the property in the storm water sewer district and a schedule of the amount proposed to be assessed against each separate parcel of real property in such district, which shall be filed with the municipal clerk within ten days from the date of the acceptance of the work. The mayor and city council shall then order the clerk to give notice that said plat and schedules are on file in his office and that all objections thereto, or to prior proceedings on account of errors, irregularities, or inequalities, not made in writing and filed with the municipal clerk within twenty days after the first publication of said notice shall be deemed to have been waived. Such notice shall be given by two publications in a newspaper published in said city or if there be no newspaper published in said city then in some newspaper of general circulation published in the county wherein the city is located, and by notices posted in three conspicuous places in said storm water sewer district. Said notice shall state the time and place where objections, filed as herein provided, shall be considered by the mayor and city council.

Source: Laws 1961, c. 46, § 6, p. 180.

16-672.07 Assessments; hearing; equalization; delinquent payments; interest.

The hearing on the proposed assessments shall be held by the mayor and city council sitting as a board of adjustment and equalization, at the time and place specified in such notice which shall not be less than twenty days nor more than thirty days after the date of the first publication, unless adjourned. Such session may be adjourned, with provisions for proper notice of such adjournment. At such meeting, the proposed assessment shall be adjusted and equalized with reference to benefits resulting from the improvement and shall not exceed such benefits; *Provided*, if any special assessment be payable in installments, each installment shall draw interest payable annually or semiannually from the date of levy until due. Any delinquent installments shall draw interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date of delinquency until paid.

Source: Laws 1961, c. 46, § 7, p. 180; Laws 1969, c. 51, § 35, p. 294; Laws 1980, LB 933, § 15; Laws 1981, LB 167, § 16.

16-672.08 Assessments, levy.

After the equalization of such special assessments as herein required, the same shall be levied by the mayor and city council upon all lots or parcels of real property within the storm water sewer district, specifically benefited by

reason of said improvement. The same may be relevied if, for any reason, the levy thereof is void or not enforceable and in an amount not exceeding the previous levy. Such levy shall be enforced as special assessments for street improvements are enforced in cities of the first class, and any payments thereon, made under previous levies, shall be credited to the property involved. All assessments made for such purposes shall be collected in the same manner as general taxes and shall be subject to the same penalties.

Source: Laws 1961, c. 46, § 8, p. 181.

16-672.09 Assessments; maturity; interest; rate.

All special assessments provided for in section 16-672.08 shall become due in fifty days after the date of levy and may be paid within that time without interest, but if not so paid, they shall bear interest at the rate set by the city council until delinquent. Such assessments shall become delinquent in equal annual installments over such period of years as the mayor and city council may determine at the time of making the levy. Delinquent installments shall bear interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, until paid and shall be collected in the usual manner for the collection of general taxes and shall be subject to the same penalties.

Source: Laws 1961, c. 46, § 9, p. 181; Laws 1969, c. 51, § 36, p. 294; Laws 1980, LB 933, § 16; Laws 1981, LB 167, § 17.

16-672.10 Assessments; sinking fund; disbursement.

All the special assessments provided for in section 16-672.08, shall, when levied and collected be placed in a sinking fund for the purpose of paying the cost of the improvements as provided in sections 16-672.01 to 16-672.11 with allowable interest thereon, and shall be solely and strictly applied to such purpose to the extent required; but any excess thereof may be by the mayor and city council, after fully discharging the purposes for which levied, transferred to such other fund or funds as the mayor and city council may deem advisable.

Source: Laws 1961, c. 46, § 10, p. 182.

16-672.11 Bonds; maturity; interest; rate; contractor; interest; warrants; tax levy.

For the purpose of paying the cost of the public improvements as provided in sections 16-672.01 to 16-672.11, the mayor and city council of any such city, after such improvements have been completed and accepted, shall have the power to issue negotiable bonds of any such city to be called storm water sewer district bonds, payable in not exceeding twenty years and bearing interest payable annually, which may either be sold by the city or delivered to the contractor in payment for the work, but in either case for not less than their par value. For the purpose of making partial payments as the work progresses, warrants may be issued by the mayor and city council upon certificates of the engineer in charge, showing the amount of work completed and materials necessarily purchased and delivered for the orderly and proper continuance of the project, in a sum not exceeding ninety-five percent of the cost thereof, and upon the completion and acceptance of the work, a final warrant may be issued for the balance due the contractor, which warrants shall be redeemed and paid upon the sale of the bonds issued and sold as provided in this section. The city

shall pay to the contractor interest at the rate of eight percent per annum on the amounts due on partial and final payments beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the governing body and running until the date that the warrant is tendered to the contractor. All special assessments which may be levied upon property specially benefited by such work or improvements in any such storm water sewer district shall, when collected, be set aside and placed in a sinking fund for the payment of the interest and principal of the bonds. There shall be levied annually upon all of the taxable property in the city a tax which, together with such sinking fund derived from special assessments collected, shall be sufficient to meet payments of interest and principal on the bonds as the same become due. Such tax shall be known as the storm water sewer tax, shall be payable annually, shall be collected in the same manner as general taxes, and shall be subject to the same penalties.

Source: Laws 1961, c. 46, § 11, p. 182; Laws 1969, c. 51, § 37, p. 295; Laws 1974, LB 636, § 3; Laws 1992, LB 719A, § 42.

(g) PUBLIC UTILITIES

16-673 Construction and operation; contracts; procedures.

The mayor and city council of any city of the first class shall have power to make contracts with and authorize any person, company, or association to erect a gas works, power plant, electric or other light works, heating plant, or waterworks in such city and give such persons, company, or association the privilege of furnishing water, lights, power, or heat for the streets, lanes, alleys, and public places and property of such city and its inhabitants for any length of time not exceeding twenty-five years. Any city of the first class may by resolution of the city council contract for the furnishing of electricity at retail to such city and the inhabitants thereof with any public power district, or an electric cooperative which cooperative has an approved retail service area adjoining such city's retail service area.

Source: Laws 1901, c. 18, § 54, p. 272; Laws 1905, c. 23, § 2, p. 244; Laws 1907, c. 14, § 1, p. 121; Laws 1909, c. 19, § 1, p. 184; R.S.1913, § 4954; Laws 1917, c. 97, § 1, p. 260; Laws 1919, c. 38, § 1, p. 120; Laws 1921, c. 169, § 1, p. 661; C.S.1922, § 4123; C.S.1929, § 16-652; Laws 1931, c. 29, § 1, p. 118; C.S.Supp.,1941, § 16-652; R.S.1943, § 16-673; Laws 1951, c. 26, § 2, p. 118; Laws 1965, c. 58, § 1, p. 266; Laws 1969, c. 83, § 1, p. 418; Laws 1975, LB 67, § 1.

Contract with private corporation to supply water to supplement city waterworks system authorized. Hevelone v. City of Beatrice, 120 Neb. 648, 234 N.W. 791 (1931).

Power company that contracted with village, to furnish electric power at a given rate for twenty-five years, is estopped, after operating thereunder for six years, to claim the contract was ultra vires and confiscatory. Village of Davenport v. Meyer Hydro-Electric Power Co., 110 Neb. 367, 193 N.W. 719 (1923).

Under prior act, city's authority to grant a franchise to a gas company was not restricted to such works being built within such city nor need its franchise be limited to a period of five years. Sharp v. City of South Omaha, 53 Neb. 700, 74 N.W. 76 (1898).

City cannot make a contract precluding it from increasing or decreasing the rates for electric power during the life of the contract, but such city cannot make rates that are noncompensatory or confiscatory. Central Power Co. v. City of Kearney, 274 F. 253 (8th Cir. 1921).

Authority granted city to contract to build and operate a waterworks ''on such terms and under such regulations as may be agreed on'' constitutes authority to agree with water company on water rates for twenty-five years, and city's attempt to alter such rates may be enjoined. Omaha Water Co. v. City of Omaha, 147 F. 1 (8th Cir. 1906).

City is estopped to defend against waterworks bonds in hands of innocent purchasers where such bonds reflect city certified in bond that they were legally issued, it having plenary power so to do, though the bonds cited the wrong statutory section as authority therefor. City of Beatrice v. Edminson, 117 F. 427 (8th Cir. 1902).

16-674 Acquisition of plants or facilities; condemnation; procedure.

The mayor and city council shall have power to purchase or provide for, establish, construct, extend, enlarge, maintain, operate, and regulate for the city any such waterworks, gas works, power plant, including an electrical distribution facility, electric or other light works, or heating plant, or to condemn and appropriate, for the use of the city, waterworks, gas works, power plant, including an electrical distribution facility, electric or other light works, or heating plant. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724, except as to property specifically excluded by section 76-703 and as to which sections 19-701 to 19-707 or the Municipal Natural Gas System Condemnation Act is applicable. For purposes of this section, an electrical distribution facility shall be located within the retail service area of such city as approved by and on file with the Nebraska Power Review Board, pursuant to Chapter 70, article 10.

Source: Laws 1901, c. 18, § 54, p. 272; Laws 1905, c. 23, § 2, p. 244; Laws 1907, c. 14, § 1, p. 122; Laws 1909, c. 19, § 1, p. 184; R.S.1913, § 4954; Laws 1917, c. 97, § 1, p. 260; Laws 1919, c. 38, § 1, p. 120; Laws 1921, c. 169, § 1, p. 661; C.S.1922, § 4123; C.S.1929, § 16-652; Laws 1931, c. 29, § 1, p. 118; C.S.Supp.,1941, § 16-652; R.S.1943, § 16-674; Laws 1951, c. 101, § 53, p. 471; Laws 1982, LB 875, § 1; Laws 2002, LB 384, § 24.

Cross References

Municipal Natural Gas System Condemnation Act, see section 19-4624.

Gas company's franchise authorizes it to substitute natural gas for artificial gas, as such substitution carries out the intention of the franchise to insure the best gas available to the users. Central Power Co. v. City of Hastings, 52 F.2d 487 (D. Neb. 1931).

16-675 Acquisition; operation; tax authorized.

The mayor and city council may levy a tax, not exceeding seven cents on each one hundred dollars upon the taxable value of all the taxable property in such city, for the purpose of paying the cost of lighting the streets, lanes, alleys, and other public places or property of the city, for the purpose of furnishing water, heat, or power for the city, or for the purpose of buying, establishing, extending, or maintaining such waterworks, gas, electric, or other light works, or heating or power plant, not exceeding three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city for any one of the respective purposes.

Source: Laws 1901, c. 18, § 54, p. 272; Laws 1905, c. 23, § 2, p. 244; Laws 1907, c. 14, § 1, p. 122; Laws 1909, c. 19, § 1, p. 184; R.S.1913, § 4954; Laws 1917, c. 97, § 1, p. 261; Laws 1919, c. 38, § 1, p. 121; Laws 1921, c. 169, § 1, p. 661; C.S.1922, § 4123; C.S.1929, § 16-652; Laws 1931, c. 29, § 1, p. 118; C.S.Supp.,1941, § 16-652; R.S.1943, § 16-675; Laws 1953, c. 287, § 8, p. 934; Laws 1979, LB 187, § 39; Laws 1992, LB 719A, § 43.

Provision in prior act, limiting tax levy to five mills on a dollar valuation for purpose stated, repealed by implication, and reduced to one mill on a dollar valuation by reason of the amendment of the general revenue laws. Drew v. Mumford, 114 Neb. 100, 206 N.W. 159 (1925).

16-676 Acquisition; operation; bonds; issuance; amount; approval of electors required.

Where the amount of money which would be raised by the tax levy provided for in section 16-675 would be insufficient to establish or pay for a system of waterworks, gas, electric, or other light works, or heating or power system, the mayor and city council may borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise to an amount not exceeding two hundred and fifty thousand dollars for the purpose of establishing, constructing, extending, enlarging or paying for, or maintaining the utilities named in this section; *Provided,* that no such bonds shall be issued by the city council until the question of issuing the same shall have been submitted to the electors of the city at an election held for such purpose, notice of which shall have been given by publication once each week for three successive weeks prior thereto in a legal newspaper published in or of general circulation in such city, and a majority of the electors voting upon the proposition shall have voted in favor of issuing such bonds. However, no election shall be called until a petition signed by at least fifty resident freeholders shall be presented to the mayor and council asking that an election be called for the purpose herein specified.

Source: Laws 1901, c. 18, § 54, p. 272; Laws 1905, c. 23, § 2, p. 244; Laws 1907, c. 14, § 1, p. 122; Laws 1909, c. 19, § 1, p. 185; R.S.1913, § 4954; Laws 1917, c. 97, § 1, p. 261; Laws 1919, c. 38, § 1, p. 121; Laws 1921, c. 169, § 1, p. 662; C.S.1922, § 4123; C.S.1929, § 16-652; Laws 1931, c. 29, § 1, p. 118; C.S.Supp.,1941, § 16-652; R.S.1943, § 16-676; Laws 1951, c. 26, § 3, p. 118.

16-677 Bonds; sinking funds; tax to provide.

When such bonds shall have been issued by the city, the mayor and council shall have power to levy annually upon all taxable property of the city such tax as may be necessary for a sinking fund for the payment of accruing interest on such bonds and the principal thereof at maturity, and to provide for the office of water commissioner, power commissioner, light commissioner or heat commissioner, and to prescribe the powers and duties of such officers.

Source: Laws 1901, c. 18, § 54, p. 273; Laws 1905, c. 23, § 2, p. 245; Laws 1907, c. 14, § 1, p. 122; Laws 1909, c. 19, § 1, p. 185; R.S.1913, § 4954; Laws 1917, c. 97, § 1, p. 261; Laws 1919, c. 38, § 1, p. 121; Laws 1921, c. 169, § 1, p. 662; C.S.1922, § 4123; C.S.1929, § 16-652; Laws 1931, c. 29, § 1, p. 119; C.S.Supp.,1941, § 16-652.

16-678 Existing franchises and contracts; rights preserved; tax authorized.

Nothing contained in sections 16-673 to 16-677 shall change or in any way affect existing franchises or existing contracts between any city and any company, corporation, or individual for furnishing the city or its inhabitants with light, power, heat, or water. The mayor and council shall levy a sufficient tax to pay for such light, power, heat, or water supply in accordance with the terms of such existing contracts, not exceeding four and nine-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city in any one year for any one of the purposes.

Source: Laws 1901, c. 18, § 54, p. 273; Laws 1905, c. 23, § 2, p. 245; Laws 1907, c. 14, § 1, p. 123; Laws 1909, c. 19, § 1, p. 185; R.S.1913, § 4954; Laws 1917, c. 97, § 1, p. 261; Laws 1919, c.

38, § 1, p. 121; Laws 1921, c. 169, § 1, p. 662; C.S.1922, § 4123; C.S.1929, § 16-652; Laws 1931, c. 29, § 1, p. 119; C.S.Supp.,1941, § 16-652; R.S.1943, § 16-678; Laws 1953, c. 287, § 9, p. 934; Laws 1979, LB 187, § 40; Laws 1992, LB 719A, § 44.

16-679 Service; duty to provide; rates; regulation.

The mayor and council shall have power to require every individual or private corporation operating such works or plants, subject to reasonable rules and regulations, to furnish any person applying therefor, along the line of its pipes, mains, wires or other conduits, with gas, water, power, light or heat, and to supply said city with water for fire protection, and with gas, water, power, light or heat, for other necessary public or private purposes; to regulate and fix the rents or rates of water, power, gas, electric light or heat; and to regulate and fix the charges for water meters, power meters, gas meters, electric light or heat meters, or other device or means necessary for determining the consumption of water, power, gas, electric light or heat. These powers shall not be abridged by ordinance, resolution or contract.

Source: Laws 1901, c. 18, § 55, p. 273; R.S.1913, § 4955; C.S.1922, § 4124; C.S.1929, § 16-653.

Under facts in this case, ordinance fixing rates for electrical energy supplied by city-owned plant was not subject to referendum. Hoover v. Carpenter, 188 Neb. 405, 197 N.W.2d 11 (1972).

A city fixing rates acts in a legislative, rather than a judicial capacity. A utility is entitled to a fair return. Rates fixed by city are presumed to be correct and reasonable and burden is on party attacking them to show they are unreasonable. A litigant who invokes the provisions of this statute may not challenge its constitutionality. Kansas-Nebraska Nat. Gas Co., Inc. v. City of Sidney, 186 Neb. 168, 181 N.W.2d 682 (1970).

Cities of the first class may regulate rates to be charged for gas. Nebraska Natural Gas Co. v. City of Lexington, 167 Neb. 413, 93 N.W.2d 179 (1958).

City's authority to erect, extend or to improve and to maintain a sewer system and to issue bonds payable from taxes is independent and complete. State ex rel. City of Columbus v. Price, 127 Neb. 132, 254 N.W. 889 (1934).

City cannot make contract for light and power with provision that precludes it from changing the rates during the life thereof, and a contract so doing is void. Central Power Co. v. City of Kearney, 274 F. 253 (8th Cir. 1921).

16-680 Sewerage system; drainage; waterworks; bonds authorized; amount; approval of electors; sewer or water commissioner; authorized.

The mayor and council shall have power to borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise in an amount not exceeding in the aggregate four hundred thousand dollars for the purpose of constructing or aiding in the construction of a system of sewerage. They may borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise in any amount, not exceeding in the aggregate seven hundred fifty thousand dollars, for the purpose of constructing culverts and drains for the purpose of deepening, widening, straightening, walling, filling, covering, altering, or changing the channel of any watercourse or any natural or artificial surface waterway or any creek, branch, ravine, ditch, draw, basin, or part thereof flowing or extending through or being within the limits of the city and for the purpose of constructing artificial channels or covered drains sufficient to carry the water theretofore flowing in such watercourse and divert it from the natural channel and conduct the same through such artificial channel or covered drain and fill the old channel. They may borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise in an amount not exceeding in the aggregate two hundred fifty thousand dollars for the purpose of constructing, maintaining, and operating a system of waterworks for the city. No such bonds shall be issued by the city

council until the question of issuing the same has been submitted to the electors of the city at an election called and held for that purpose, notice of which shall be given by publication in some newspaper published in the city at least thirty days before the date of the election, and a majority of the electors voting upon the proposition have voted in favor of issuing such bonds. When any such bonds have been issued by the city, they may levy annually upon all taxable property of the city such tax as may be necessary for a sinking fund for the payment of the accruing interest upon the bonds and the principal thereof at maturity. They may provide for the office of sewer commissioner or water commissioner and prescribe the duties and powers of such offices.

Source: Laws 1901, c. 18, § 56, p. 274; Laws 1909, c. 20, § 1, p. 188; Laws 1913, c. 35, § 1, p. 112; R.S.1913, § 4956; Laws 1917, c. 98, § 1, p. 262; C.S.1922, § 4125; Laws 1927, c. 41, § 1, p. 175; C.S.1929, § 16-654; R.S.1943, § 16-680; Laws 1965, c. 59, § 1, p. 273; Laws 1971, LB 534, § 13; Laws 1992, LB 719A, § 45.

City's authority to erect, extend or to improve and to maintain a sewer system and to issue bonds payable from taxes is independent and complete. State ex rel. City of Columbus v. Price, 127 Neb. 132, 254 N.W. 889 (1934).

City had authority, by ordinance, to contract with others, to operate and construct water system, partly within and partly without city limits for twenty years, and to provide therein that it should have right to purchase the same at a valuation determined by appraisers. Omaha Water Co. v. City of Omaha, 162 F. 225 (8th Cir. 1908).

Authority granted city to contract to build and operate a waterworks ''on such terms and under such regulations as may be agreed on'' constitutes authority to agree with water company on water rates for twenty-five years, and city's attempt to alter such rates may be enjoined. Omaha Water Co. v. City of Omaha, 147 F. 1 (8th Cir. 1906).

16-681 Municipal utilities; service; rates; regulation.

Such city owning, operating or maintaining its own gas, water, power, light or heat system, shall furnish any person applying therefor, along the line of its pipes, mains, wires or other conduits, subject to reasonable rules and regulations, with gas, water, power, light or heat. It shall regulate and fix the rental or rate for gas, water, power, light or heat, and regulate and fix the charges for water meters, power meters, gas meters, light meters or heat meters or other device or means necessary for determining the consumption of gas, water, power, light or heat. It shall require water meters, gas meters, light meters, power meters, or heat meters to be used, or other device or means necessary for determining the consumption of gas, water, power, light or heat.

Source: Laws 1901, c. 18, § 57, p. 275; R.S.1913, § 4957; C.S.1922, § 4126; C.S.1929, § 16-655; Laws 1937, c. 23, § 1, p. 146; C.S.Supp.,1941, § 16-655.

Water service to persons outside the corporate limits of the city is contractual and permissive. Burger v. City of Beatrice, 181 Neb. 213, 147 N.W.2d 784 (1967).

16-682 Municipal utilities; service; delinquent rents; lien; collection.

Such cities shall have the right and power to tax, assess, and collect from the inhabitants thereof such rent or rents for the use and benefit of water, gas, power, light or heat used or supplied to them by such waterworks, mains, pump, or extension of any system of waterworks, or water supply, or by such gas, light or heat system, as the council shall by ordinance deem just or expedient. With respect to water rates, taxes or rents only, such water rates, taxes or rents, when delinquent, shall be a lien upon the premises or real estate upon or for which the same is used or supplied; and such water taxes, rents or rates shall be paid and collected and such lien enforced in such manner as the

council or commission, as the case may be, shall by ordinance direct and provide. Any delinquent water rentals which remain unpaid for a period of three months after they become due may be, by resolution of the said council or commission, assessed against said real estate as a special assessment, which said special assessment shall be certified by the city clerk to the county clerk of the county in which said city is situated. Said county clerk shall thereupon place same on the tax rolls for collection, subject to the same penalties and to be collected in like manner as other city taxes; *Provided*, that the local governing body of said city shall notify in writing nonoccupying owners of premises or their agents whenever their tenants or lessees are sixty days delinquent in the payment of water rent. Thereafter if the owner of said real estate or his agent within such city shall notify the council or commission in writing to discontinue water service to said real estate or the occupants thereof, it shall be the duty of the officer in charge of the water department promptly to discontinue said service; and rentals for any water furnished to the occupants of said real estate in violation of said notice shall not be a lien thereon.

Source: Laws 1937, c. 26, § 1, p. 147; C.S.Supp.,1941, § 16-655.

16-683 Construction; bonds; plan and estimate required; extensions, additions, and enlargements.

Before submitting any proposition for borrowing money for either of the purposes mentioned in sections 16-673, 16-674 and 16-680, the mayor and council shall determine upon and adopt a system of sewerage, waterworks, heating, lighting or power, as the case may be, and shall determine upon and adopt a plan for constructing drains or culverts, or for doing other work upon or in connection with watercourses or waterways as authorized in section 16-680. They shall procure from the city engineer an estimate of the actual cost of such system, an estimate of the cost of so much thereof as the mayor and council may propose to construct with the amount proposed to be borrowed, and plans of such system. The estimate shall be placed and remain in the hands of the city clerk, subject to public inspection during all the times such proposition to borrow money shall be pending. After a system shall have been adopted, no other system or plan shall be adopted in lieu thereof unless authorized by vote of the people. After construction of any such systems, works or improvements as are authorized in said sections, the city may by vote of the people issue bonds to construct extensions, additions or enlargements thereof, but not to exceed one hundred twenty-five thousand dollars in any one year, and the total amount of outstanding bonded indebtedness of any such city for the initial construction of any such systems, works or improvements and for the construction of extensions, additions and enlargements thereof shall not exceed the respective aggregate limitations of amount imposed under section 16-680.

Source: Laws 1901, c. 18, § 58, p. 275; Laws 1913, c. 35, § 2, p. 113; R.S.1913, § 4958; C.S.1922, § 4127; C.S.1929, § 16-656; R.S. 1943, § 16-683; Laws 1947, c. 27, § 1, p. 132.

16-684 Construction; operation; location; eminent domain; procedure.

When the system of waterworks or sewerage, power, heating, lighting, or drainage shall have been adopted, and the people shall have voted to borrow money to aid in the construction as aforesaid, the mayor and council may erect and construct and maintain such system of waterworks or sewerage or power

plant, lighting, heating, or drainage, either within or without the corporate limits of the city, make all needful rules and regulations concerning their use, and do all acts necessary for the construction, completion, and management and control of same not inconsistent with law, including the taking of private property for the public use for the construction and operation of the same. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724, except as to property specifically excluded by section 76-703 and as to which sections 19-701 to 19-707 are applicable.

Source: Laws 1901, c. 18, § 59, p. 275; Laws 1909, c. 19, § 1, p. 186; Laws 1913, c. 35, § 3, p. 114; R.S.1913, § 4959; C.S.1922, § 4128; Laws 1929, c. 43, § 1, p. 187; C.S.1929, § 16-657; R.S.1943, § 16-684; Laws 1951, c. 101, § 54, p. 472.

A city may acquire existing electric and waterworks systems by eminent domain, but such power cannot extend so as to acquire a utilities property which furnishes several kinds of utility service, and is operated as a unit. Central Power Co. v. Nebraska City, 112 F.2d 471 (8th Cir. 1940).

16-684.01 Reserve funds; water mains and equipment; when authorized; labor.

After the establishment of a system of waterworks in any city of the first class, the mayor and council may expend any accumulated reserve funds in its water department for the purpose of laying and relaying water mains and the installation of water equipment for fire protection. The city shall have the power and authority to employ the necessary labor therefor without the necessity of advertising for bids or of letting a contract or contracts therefor.

Source: Laws 1945, c. 24, § 1, p. 133.

16-685 Transferred to section 19-2701.

16-686 Rural lines; when authorized; rates.

Said city is hereby authorized and empowered, for the purpose of carrying out the provisions of sections 16-684 and 19-2701, to construct, maintain and operate the necessary rural transmission and distribution lines for a distance of eighteen miles from the corporate limits of said city upon, along and across any of the public highways of this state under the conditions and provisions prescribed by law for the construction of electric transmission and distribution lines to persons, firms, associations or corporations. Before the construction of any such rural electric transmission or distribution lines shall be undertaken, such city shall enter into contracts for electric service with persons, firms, associations or corporations to be served at rates which will produce an annual gross revenue to such city equal to not less than fifteen percent of the cost of said construction. Such city shall thereafter adjust such rates when necessary to produce such gross revenue.

Source: Laws 1929, c. 43, § 1, p. 188; C.S.1929, § 16-657; R.S.1943, § 16-686; Laws 1945, c. 22, § 1, p. 130.

16-686.01 Natural gas distribution system; service to cities of the second class and villages; when authorized.

Any city of the first class owning and operating a natural gas distribution system within such city, and owning and operating its own lateral supply line from its distribution system to a natural gas pipeline source of supply, may by ordinance, where such lateral supply line is so located with reference to any

second-class cities or villages within twenty miles of such city not then being supplied with natural gas and having no other source of gas supply available, make gas service available at retail to such municipalities and for that purpose construct, operate, and maintain connecting lines to and natural gas distribution systems in the municipalities; *Provided,* that such city prior to the construction of such facilities and the rendering of such service, shall secure from the respective municipalities to be served a natural gas franchise as provided by law.

Source: Laws 1951, c. 24, § 1, p. 114.

16-687 Contracts; terms; special election.

In case such aids shall not be voted by the people in the manner aforesaid, or having voted bonds and constructed a system of waterworks and having failed to obtain an adequate supply of good water, then the mayor and council may contract with and procure individuals or corporations to construct and maintain a system of waterworks, power, heating or lighting plant in such city for any time not exceeding twenty years from the date of the contract, with a reservation to the city of the right to purchase such waterworks, lighting, heating, or power plant at any time after the lapse of ten years from the date of the contract upon payment to such individuals or corporations of any amount to be determined from the contract, not exceeding the cost of the construction of such waterworks, power, lighting, or heating plant. In other respects such contract may be on such terms as may be agreed upon by a two-thirds vote of the council, entered upon the minutes; *Provided,* that no such contract shall be made unless authorized by a majority vote of the legal voters of such city at a special election called for that purpose, notice of which shall be given by publication once each week for three successive weeks prior thereto in a legal newspaper published in or of general circulation in such city.

Source: Laws 1901, c. 18, § 60, p. 276; Laws 1907, c. 13, § 1, p. 120; R.S.1913, § 4961; C.S.1922, § 4130; C.S.1929, § 16-659; R.S. 1943, § 16-687; Laws 1951, c. 26, § 4, p. 119.

After having voted bonds and constructed a waterworks system, and having failed to obtain adequate supply of water, city may contract with private company for supplemental water supply. Hevelone v. City of Beatrice, 120 Neb. 648, 234 N.W. 791 (1931).

16-688 Water; unwholesome supply; purification system; authority to install; election; tax authorized.

When any city has voted bonds and constructed a system of waterworks and obtained an adequate supply of water but the same is turbid or unwholesome during the whole or a portion of the year, the mayor and council may without having previously made an appropriation therefor, when authorized by a majority vote of the electors voting on the question, which may be submitted at either a special or a general city election, construct, purchase, or enter into a contract for the construction or purchase of and install, establish, operate, and maintain a system of settling reservoirs or a system of filters, or both of such systems of settling reservoirs and filters, for the purpose of clarifying and purifying such water. Notice of such election shall be given by publication once each week three successive weeks prior thereto in a legal newspaper published in or of general circulation in such city. The city may levy taxes on all taxable property of such city, not to exceed three and five-tenths cents on each one

hundred dollars upon the taxable value thereof in any one year for the payment of the cost thereof.

Source: Laws 1907, c. 13, § 1, p. 120; R.S.1913, § 4961; C.S.1922, § 4130; C.S.1929, § 16-659; R.S.1943, § 16-688; Laws 1951, c. 26, § 5, p. 120; Laws 1953, c. 287, § 10, p. 934; Laws 1979, LB 187, § 41; Laws 1992, LB 719A, § 46.

16-689 Repealed. Laws 1976, LB 688, § 2.

16-690 Repealed. Laws 1976, LB 688, § 2.

16-691 Board of public works; powers and duties; employees authorized; approval of budget; powers of council; signing of payroll checks.

The mayor and city council may by ordinance confer upon the board of public works the active direction and supervision of such system of waterworks, power plant, or sewerage, heating, or lighting plant and the erection and construction of the same. The board may provide that such duties be performed by such employee or employees as it may direct. The city council shall approve the budget of each proprietary function as provided in the Municipal Proprietary Function Act. The board shall make reports to the mayor and council as often as the mayor and council may require. In like manner the mayor and council may confer upon such board the active direction and supervision of the system of streets and alleys.

The mayor and council may, by ordinance, authorize and empower the board of public works to employ necessary laborers and clerks, to purchase material for the operation and maintenance of the systems, and to draw its orders on the several funds in the hands of the city treasurer to the credit of the various systems in payment of salaries, labor, and material. The mayor and council shall establish the dollar amount for all extensions and projects above which the board of public works must obtain the approval of the mayor and council before expending funds. The mayor and council may, by ordinance, authorize and empower the board of public works to cooperate and participate in a plan of insurance designed and intended for the benefit of the employees of any public utility operated by the city. For that purpose the board of public works may make contributions to pay premiums or dues under such plan, authorize deductions from salaries of employees, and take such other steps as may be necessary to effectuate such plan of insurance. All orders for the disbursement of funds shall be signed by the chairperson and secretary of the board or by any two members of the board who have previously been designated for that purpose by a resolution duly adopted by such board and shall be paid by the treasurer, except that payroll checks only may be signed by any one member of the board who has previously been designated for that purpose by a resolution duly adopted by the board. Facsimile signatures of board members may be used to sign such orders and checks.

Source: Laws 1913, c. 191, § 1, p. 568; R.S.1913, § 4963; Laws 1917, c. 95, § 1, p. 256; C.S.1922, § 4132; Laws 1923, c. 150, § 1, p. 366; Laws 1925, c. 44, § 3, p. 177; C.S.1929, § 16-661; Laws 1931, c. 30, § 1, p. 120; C.S.Supp.,1941, § 16-661; R.S.1943, § 16-691; Laws 1947, c. 26, § 5, p. 130; Laws 1949, c. 29, § 1(1), p. 111;

Laws 1953, c. 30, § 1, p. 117; Laws 1963, c. 66, § 1, p. 265; Laws 1978, LB 558, § 1; Laws 1981, LB 171, § 1; Laws 1983, LB 304, § 2; Laws 1993, LB 734, § 24.

Cross References

Municipal Proprietary Function Act, see section 18-2801.

16-691.01 Board of public works; surplus funds; investment; securities; purchase; sale.

Any surplus funds remaining in the hands of the city treasurer, to the credit of said various funds, may be invested by the board of public works, with the approval of the mayor and council, in accordance with the provisions of sections 16-712, 16-713, and 16-715, in interest-bearing securities of the State of Nebraska or any political subdivision thereof, certificates of deposit of banks which are members of the Federal Deposit Insurance Corporation, or in interest-bearing securities of the United States upon an order for that purpose drawn by the board of public works upon the city treasurer. Such securities may be purchased, sold or hypothecated by the board of public works with the approval of the mayor and city council, at their fair market value, and the interest earned by such securities shall be credited to the account of the utility from which the funds paid for the securities were originally drawn; *Provided,* in cities which have not conferred upon any board of public works the active direction and supervision of such system of waterworks, power plant, sewerage, and heating or lighting plant, the powers and duties hereby conferred upon the board of public works as to the purchase, sale, and hypothecation of said securities shall be exercised by the city treasurer of such city. Securities so purchased shall be held by the city treasurer, who shall provide adequate bond for their safekeeping. When sold, the treasurer shall deliver the same to the purchaser and collect the sale price.

Source: Laws 1947, c. 26, § 5, p. 130; Laws 1949, c. 29, § 1(2), p. 112; Laws 1969, c. 84, § 2, p. 424; Laws 1972, LB 1213, § 2.

16-691.02 Board of public works; surplus funds; disposition; transfer.

The mayor and council of any city of the first class may, by resolution, direct and authorize the treasurer to dispose of the surplus electric light, water, or natural gas distribution system funds, or the funds arising from the sale of electric light and water properties, by the payment of outstanding electric light, water, or natural gas distribution system warrants or bonds then due and by the payment of all current amounts required in any revenue bond ordinance in which any part of the earnings of the electric light or water utility or natural gas distribution system are pledged. The excess, if any, after such payments, may be transferred to the general fund of such city at the conclusion of the fiscal year.

Source: Laws 1965, c. 60, § 1, p. 275.

16-692 Water commissioner; council member and mayor ineligible.

No member of the council or the mayor shall be eligible to the office of water commissioner during the term for which he shall be elected.

Source: Laws 1901, c. 18, § 64, p. 278; R.S.1913, § 4964; C.S.1922, § 4133; C.S.1929, § 16-662.

16-693 Bonds; tax authorized; how used.

When any bonds shall have been issued by the city for the purpose of constructing or aiding in the construction of a system of waterworks, power plant, sewerage, heating, lighting or drainage, there shall thereafter be levied annually upon all taxable property of said city a tax not exceeding seven cents on each one hundred dollars for every twenty thousand dollars of bonds so issued, which shall be known as the waterworks tax, power tax, sewerage tax, heat tax, light tax or drainage tax, as the case may be, and shall be payable only in money. The proceeds of such tax, together with all income received by the city from the payment and collection of water, power, heat or light, rent, taxes, and rates of assessments, shall first be applied to the payment of the current expenses of waterworks, power plant, heating or lighting, to improvements, extensions, and additions thereto, and interest on money borrowed and bonds issued for their construction. The surplus, if any, shall be retained for a sinking fund for the payment of such loan or bonds at maturity.

Source: Laws 1901, c. 18, § 65, p. 278; Laws 1913, c. 35, § 4, p. 115; R.S.1913, § 4965; Laws 1917, c. 95, § 1, p. 257; C.S.1922, § 4134; C.S.1929, § 16-663; R.S.1943, § 16-693; Laws 1965, c. 60, § 2, p. 275; Laws 1979, LB 187, § 42.

16-694 Sewers; maintenance and repairs; annual tax; service rate in lieu of tax; lien.

After the establishment of a system of sewerage in any city of the first class, the mayor and council may, at the time of levying other taxes for city purposes, levy an annual tax of not more than three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city for the purpose of creating a fund to be used exclusively for the maintenance and repairing of any sewers in such city. In lieu of the levy of a tax, the mayor and council may establish, by ordinance, such rates for such sewer service as may be deemed by them to be fair and reasonable, to be collected from either the owner or the person, firm, or corporation requesting the service at such times, either monthly, quarterly, or otherwise, as may be specified in the ordinance. All such sewer charges shall be a lien upon the premises or real estate for which the same is used or supplied. Such lien shall be enforced in such manner as the local governing body provides by ordinance. The charges thus made, when collected, shall be placed in a separate fund and used exclusively for the purpose of maintenance and repairs of any sewers in such city.

Source: Laws 1925, c. 46, § 1, p. 186; C.S.1929, § 16-664; Laws 1943, c. 33, § 1, p. 151; R.S.1943, § 16-694; Laws 1947, c. 51, § 1, p. 172; Laws 1951, c. 27, § 1, p. 122; Laws 1953, c. 287, § 11, p. 935; Laws 1979, LB 187, § 43; Laws 1992, LB 719A, § 47.

(h) PARKS

16-695 Parks; swimming pool; stadium; other facilities; acquisition of land; bonds; election; issuance; interest; term.

The mayor and council of any city of the first class are hereby authorized to acquire by purchase or otherwise and hold in the name of the city, lands, lots, or grounds within or without the limits of the city to be used and improved for

parks, parkways, or boulevards. To pay for and improve such lands, lots, or grounds, the mayor and council of such city are authorized to issue bonds for such purposes, except that no such bonds shall be issued until the question of issuing the same shall have been submitted to the electors of the city, at a general election therein, or at a special election appointed and called by the mayor and city council for such purposes, and a majority of electors voting at such election shall have voted in favor of issuing the bonds. Notice of such election shall be given by publication once each week for three successive weeks prior thereto in a legal newspaper published in or of general circulation in such city. Such bonds shall be payable in not to exceed twenty years from the date of issuance thereof, and shall bear interest payable annually or semiannually, with interest coupons attached to the bonds. The mayor and council may at their discretion construct in any park a swimming pool, stadium, or other facilities for public use and recreation and pay for the same out of the avails of such bonds.

Source: Laws 1901, c. 18, § 80, p. 289; R.S.1913, § 4966; C.S.1922, § 4135; C.S.1929, § 16-665; R.S.1943, § 16-695; Laws 1947, c. 28, § 1, p. 134; Laws 1951, c. 26, § 6, p. 120; Laws 1965, c. 61, § 1, p. 276; Laws 1969, c. 51, § 38, p. 295; Laws 1982, LB 692, § 1.

16-696 Board of park commissioners; appointment; number; qualifications; powers and duties; recreation board; board of park and recreation commissioners.

(1) In each such city, which acquires land for a park or parks, there may be a board of park commissioners, who shall have charge of all the parks belonging to the city, with power to establish rules for the management, care, and use of the same. The board of park commissioners shall be composed of not less than three members, but the total number shall be evenly divisible by three, who shall be residents of the city. In the event of a tie vote, the motion under consideration shall fail to be adopted. They shall be appointed by the mayor and council at their first regular meeting in January each year except for the original board which may be appointed any time. At the time of the first appointment, one-third of the number to be appointed shall be appointed for a term of one year, one-third for a term of two years, and the rest shall be appointed for a term of three years, which term shall be computed from the first meeting in the preceding January. After the appointment of the original board it shall be the duty of the mayor and council to appoint or reappoint one-third of the board each year for a term of three years to commence at the time of appointment at the first meeting in January. Each member shall serve until his or her successor is appointed and qualified. A vacancy occurring on such board by death, resignation, or disqualification of a member shall be filled for the remainder of such term at the next regular meeting of the city council. A majority of all the members of the board of park commissioners shall constitute a quorum. It shall be the duty of the board of park commissioners to lay out, improve, and beautify all grounds owned or acquired for public parks, and employ helpers and laborers as may be necessary for the proper care and maintenance of such parks, and the improvement and beautification thereof, to the extent that funds may be provided for such purposes. The members of the board, at its first meeting in each year, shall elect one of their own members as chairperson of such board. Before entering upon his or her duties each member

of the board shall take an oath, to be filed with the city clerk, that he or she will faithfully perform the duties of the office and will not in any manner be actuated or influenced therein by personal or political motives.

(2) The board of park commissioners may also be constituted by the mayor and council as an ex officio recreation board. When so constituted, such recreation board shall have the duty and authority to promote, manage, supervise, and control all recreation activities supported financially by such city to the extent funds are available.

(3) The mayor and council of such city may abolish the board of park commissioners, if one has been appointed as provided in this section, and may establish a board of park and recreation commissioners, who shall have charge of all parks belonging to the city and all recreational activities supported financially by the city, with power to establish rules for the management, care, supervision, and use of such parks. The board of park and recreation commissioners shall be appointed to such terms of office and in such numbers as provided in this section for appointment of a board of park commissioners. It shall be the duty of the board of park and recreation commissioners to lay out, improve, beautify, and design all grounds, bodies of water, and buildings owned or acquired for public parks and recreational facilities, and employ such persons as may be necessary for the proper direction, care, maintenance, improvement, and beautification thereof, and for program planning and leadership of recreational activities, to the extent that funds may be provided for such purposes. The board shall also have the duty of continued study and promotion of the needs of such city for additional park and recreational facilities. Members of the board of park and recreation commissioners at its first meeting in each year shall elect one of its own members as chairperson of the board. Before entering upon his or her duties each member of the board shall take an oath, to be filed with the city clerk, that he or she will faithfully perform the duties of the office and will not in any manner be actuated or influenced therein by personal or political motives.

Source: Laws 1901, c. 18, § 81, p. 290; Laws 1901, c. 19, § 8, p. 318; R.S.1913, § 4967; C.S.1922, § 4136; C.S.1929, § 16-666; R.S. 1943, § 16-696; Laws 1969, c. 85, § 1, p. 427; Laws 1969, c. 86, § 1, p. 429; Laws 1971, LB 559, § 1; Laws 2004, LB 937, § 1; Laws 2005, LB 626, § 2.

16-697 Park fund or park and recreation fund; annual levy; audit of accounts; warrants; contracts; reports.

(1) For the purpose of (a) providing funds for amusements and recreation, (b) providing funds for laying out, purchasing, improving, and beautifying parks and public grounds, and (c) providing for the payment of the salaries and wages of employees of such board, the mayor and council shall, each year at the time of making the levy for general city purposes, make a levy upon the taxable value of all the taxable property in such city. Such levy shall be collected and paid into the city treasury and shall constitute the park fund or park and recreation fund as the case may be.

(2) All accounts against the park fund or park and recreation fund of such city, provided for by subsection (1) of this section, for salaries and wages of the employees and all other expenses of such parks or recreational facilities shall be audited and allowed by the park or park and recreation commissioners. All

warrants thereon shall be drawn only by the chairperson of the commissioners. Warrants so drawn shall be paid by the city treasurer out of such fund.

(3) The park or park and recreation commissioners of such city, as the case may be, shall enter into any contracts of any nature involving an expenditure in accordance with the policies of the city council.

(4) The chairperson of the board of park or park and recreation commissioners shall, on January 1 and July 1 of each year, file with the city clerk an itemized statement of all the expenditures of the board.

Source: Laws 1901, c. 18, § 81, p. 290; Laws 1901, c. 19, § 8, p. 318; R.S.1913, § 4968; Laws 1915, c. 88, § 1, p. 228; C.S.1922, § 4137; Laws 1925, c. 52, § 1, p. 204; C.S.1929, § 16-667; Laws 1933, c. 26, § 1, p. 200; Laws 1935, c. 30, § 1, p. 134; C.S.Supp.,1941, § 16-667; R.S.1943, § 16-697; Laws 1953, c. 31, § 1, p. 119; Laws 1969, c. 86, § 2, p. 431; Laws 1979, LB 187, § 44; Laws 1992, LB 719A, § 48.

16-697.01 Parks, recreational facilities, and public grounds; acquisition; control.

Any city of the first class is hereby authorized and empowered to take land in fee, within or without its corporate limits by donation, gift, devise, purchase or appropriation, and to hold, improve and control such land for parks, recreational facilities, and public grounds. The jurisdiction and police power of the mayor and city council of any city that shall acquire any such real estate shall be at once extended over the same. The mayor and city council shall have power to enact bylaws, rules and ordinances for the protection, preservation and control of any real estate acquired as herein contemplated, and provide suitable penalties for the violation of any such bylaws, rules or ordinances.

Source: Laws 1899, c. 15, § 1, p. 80; R.S.1913, § 5271; C.S.1922, § 4490; C.S.1929, § 19-101; R.S.1943, § 19-101; Laws 1969, c. 86, § 6, p. 433.

16-697.02 Borrowing; authorized; bonds; approval of electors.

The mayor and council of any first-class city shall have power to borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise, for the purpose of purchasing and improving land for parks, recreational facilities and public grounds, authority therefor having first been obtained by a majority vote of the qualified electors of the city voting on such question at any general city election of such city or at an election called for that purpose, upon a proposition or propositions submitted in the manner provided by law for the submission of propositions to aid in the construction of railroads and other works of internal improvement.

Source: Laws 1899, c. 15, § 2, p. 81; Laws 1913, c. 190, § 1, p. 567; R.S.1913, § 5272; C.S.1922, § 4491; C.S.1929, § 19-102; R.S. 1943, § 19-102; Laws 1969, c. 86, § 7, p. 433.

(i) MARKETS

16-698 Markets; construction; operation; location; approval of electors; notice; when required.

The city may, by ordinance, purchase and hold grounds for and erect and establish market houses and market places, and regulate and govern the same,

and also contract with any person or persons, companies or corporations, for the erection and regulation of such market houses and market places on such terms and conditions and in such manner as the council may prescribe, and raise all necessary revenue therefor as herein provided. The council may provide for the erection of all other useful and necessary buildings for the use of the city, and for the protection and safety of all property owned by the city, in connection with such market houses and places. It may locate such market houses and market places and buildings aforesaid on any street, alley, or public grounds, or on any land purchased for such purposes, and establish, alter, and change the channel of streams and watercourses within the city, and bridge the same; *Provided,* that any such improvement costing in the aggregate a sum greater than two thousand dollars shall not be authorized until the ordinance providing therefor shall first be submitted to and ratified by a majority of the legal voters of such city voting thereon, notice of which shall be given by publication once each week for three successive weeks in a legal newspaper published in or of general circulation in such city.

Source: Laws 1901, c. 18, § 48, XXVI, p. 251; R.S.1913, § 4969; C.S.1922, § 4138; C.S.1929, § 16-668; R.S.1943, § 16-698; Laws 1951, c. 26, § 7, p. 121.

16-699 Regulation of markets.

No charge or assessment of any kind shall be made or levied on any wagon or other vehicle, or the horses thereto attached, or on the owner bringing produce or provisions to any market in the city, or standing in or occupying a place in any of the market places of the city, or in the street contiguous thereto on market days and evening previous thereto; but the mayor and council shall have full power to prevent forestalling, to prohibit or regulate huckstering in the streets, to prescribe the kind and description of articles which may be sold, and the stand or place to be occupied by the vendors, and may authorize the immediate seizure, and arrest and removal from the markets of any person violating their regulations as established by ordinance, together with any article of produce in his possession, and the immediate seizure and destruction of tainted or unsound meat, provisions or other articles of food.

Source: Laws 1901, c. 18, § 36, p. 239; R.S.1913, § 4970; C.S.1922, § 4139; C.S.1929, § 16-669.

(j) PUBLIC BUILDINGS

16-6,100 Public buildings; construction; bonds authorized; approval of electors required, when; revenue bonds.

The mayor and council shall have the power to borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise for the purpose of acquiring, by purchasing or constructing, including site acquisition, or aiding in the acquiring of a city hall, jail, auditorium, buildings for the fire department and other public buildings, including the acquisition of buildings authorized to be acquired by Chapter 72, article 14, and including acquisition of buildings to be leased in whole or in part by the city to any other political or governmental subdivision of the State of Nebraska authorized by law to lease such buildings. No such bonds shall be issued until after the same have been authorized by a majority vote of the electors of the city voting on the proposi-

tion of their issuance at an election called for the submission of such proposition and of which election notice of the time and place thereof shall have been given by publication in some newspaper printed and of general circulation in the city three successive weeks prior thereto; *Provided,* that where the building to be acquired is to be used by the State of Nebraska or its agency or agencies under a lease authorized by Chapter 72, article 14, or the building is to be leased by any other political or governmental subdivision of the State of Nebraska or other governmental agencies and where the combined area of the building to be leased by the state or its agency or agencies and the political or governmental subdivision of the State of Nebraska is more than fifty percent of the area of the building and where the cost of acquisition does not exceed two million dollars, no such vote of the electors will be required.

Source: Laws 1911, c. 15, § 1, p. 132; R.S.1913, § 4971; Laws 1915, c. 89, § 1, p. 229; Laws 1919, c. 39, § 1, p. 122; C.S.1922, § 4140; C.S.1929, § 16-670; Laws 1941, c. 23, § 1, p. 116; C.S.Supp.,1941, § 16-670; R.S.1943, § 16-6,100; Laws 1945, c. 23, § 1, p. 131; Laws 1947, c. 30, § 1, p. 138; Laws 1947, c. 28, § 2, p. 135; Laws 1969, c. 87, § 1, p. 436; Laws 1972, LB 876, § 1.

16-6,100.01 Joint city-county building; authorized; acquisition of land; erect; equip, furnish, maintain, and operate.

Any county in this state may, together with any city of the first class of the county in which the county seat is located, jointly acquire land for, erect, equip, furnish, maintain, and operate a joint city-county building to be used jointly by such county and city.

Source: Laws 1953, c. 32, § 1, p. 120.

16-6,100.02 Joint city-county building; expense; bonds; election; approval by electors.

The cost and expense of acquiring land for, erecting, equipping, furnishing, and maintaining a joint city-county building shall be borne by such county and city in the proportion determined by the county board of the county and the city council of the city of the first class. The building shall not be erected or contracted to be erected, no land shall be acquired therefor, and no bonds shall be issued or sold by the county or the city of the first class until the county and the city of the first class have each been authorized to issue bonds to defray its proportion of the cost of such land, building, equipment, and furnishings by the required number of electors of the county and the city of the first class in the manner provided by sections 16-6,100 and 23-3501.

Source: Laws 1953, c. 32, § 2, p. 121.

16-6,100.03 Joint city-county building; indebtedness; bonds; principal and interest; in addition to other limitations.

The amount of indebtedness authorized to be incurred by any county or city of the first class for the payment of principal and interest for the bonds authorized by the provisions of sections 16-6,100.01 to 16-6,100.07 shall be in addition to and over and above any limits now fixed by law.

Source: Laws 1953, c. 32, § 3, p. 121.

16-6,100.04 Joint city-county building; county board and city council; building commission; powers; duties.

The members of the county board of the county and the city council of the city of the first class which agree to build a joint city-county building shall be the building commission to purchase the land for the building and to contract for the erection, equipment, and furnishings of the building and, after completion thereof, shall be in charge of its maintenance and repair.

Source: Laws 1953, c. 32, § 4, p. 121.

16-6,100.05 Joint city-county building; building commission; plans and specifications; personnel; compensation; contracts.

The building commission shall cause to be prepared building plans and specifications for the joint building, and may employ architects, engineers, draftsmen, and such clerical help as may be deemed necessary for the purpose of preparing such plans and specifications. The compensation of such personnel shall be fixed by the commission and shall be paid in the same proportion as is determined for defraying the cost as set forth in section 16-6,100.02. The contract for erecting the building, for the equipment, and for furnishings shall be let by the commission in the same manner as for other public buildings. The members of the commission shall receive no compensation for their services as members of the commission.

Source: Laws 1953, c. 32, § 5, p. 121.

16-6,100.06 Joint city-county building; annual budget of city and county.

The county and the city of the first class shall each provide in their annual budgets an item for their proportion of the expense of maintaining such joint city-county building.

Source: Laws 1953, c. 32, § 6, p. 122.

16-6,100.07 Joint city-county building; building commission; accept gifts.

The building commission shall have power to accept gifts, devises, and bequests of real and personal property to carry out the purposes of sections 16-6,100.01 to 16-6,100.07 and, to the extent of the powers conferred upon such board by the provisions of sections 16-6,100.01 to 16-6,100.07, to execute and carry out such conditions as may be annexed to any gift, devises, or bequest.

Source: Laws 1953, c. 32, § 7, p. 122.

(k) WATERWORKS; GAS PLANT

16-6,101 Acquisition; revenue bonds; approval of electors required.

Supplemental to any existing law on the subject and in lieu of the issuance of general obligation bonds, or the levying of taxes upon property, as by law provided, any city of the first class may construct, purchase or otherwise acquire a waterworks plant or a water system, or a gas plant or a gas system, including a natural or bottled gas plant, gas distribution system or gas pipelines, either within or without the corporate limits of said city, and real and personal property needed or useful in connection therewith, and pay the cost thereof by pledging and hypothecating the revenue and earnings of any water-

works plant or water system, or a gas plant or a gas system, including a natural or bottled gas plant, gas distribution system or gas pipelines, owned or to be owned by such city. In the exercise of the authority herein granted, any city may issue and sell revenue bonds or debentures and enter into such contracts in connection therewith as may be proper and necessary. Such revenue bonds or debentures shall be a lien only upon the revenue and earnings of the waterworks plant or water system, or a gas plant or a gas system, including a natural or bottled gas plant, gas distribution system or gas pipelines, owned or to be owned by such city. No such city shall pledge or hypothecate the revenue and earnings of any waterworks plant or water system, or a gas plant or a gas system, including a natural or bottled gas plant, gas distribution system or gas pipelines, nor issue revenue bonds or debentures, as herein authorized, until the proposition relating thereto has been submitted in the usual manner to the qualified voters of such city at a general or special election and approved by a majority of the electors voting on the proposition submitted; *Provided,* such proposition shall be submitted whenever requested, within thirty days after a sufficient petition signed by the qualified voters of such city equal in number to twenty percent of the vote cast at the last general municipal election held therein, shall be filed with the city clerk. Three weeks' notice of the submission of the proposition shall be given by publication in some legal newspaper published in and of general circulation in such city, or, if no legal newspaper is published therein, then by posting in five or more public places therein. The requirement herein for a vote of the electors, however, shall not apply when such city seeks to pledge or hypothecate such revenue or earnings or issues revenue bonds or debentures solely for the maintenance, extension or enlargement of any waterworks plant or water system, or a gas plant or a gas system, including a natural or bottled gas plant, gas distribution system or gas pipelines, owned by such city.

Source: Laws 1937, c. 29, § 1, p. 151; Laws 1941, c. 22, § 1, p. 113; C.S.Supp.,1941, § 16-671.

(l) SANITARY SEWER AND WATER MAIN CONNECTION DISTRICT

16-6,102 Districts; created.

Supplemental to any existing law on the subject, whenever the mayor and council of any city of the first class shall deem it necessary and advisable to construct sanitary sewer mains or water mains, such municipal officials may by ordinance passed by not less than three-fourths of all members of the city council create a district or districts to be known as sanitary sewer connection districts or water connection districts as the case may be, for such purposes and such district or districts may include properties within the corporate limits of the municipality and one mile beyond the same. Such ordinance shall state the size and kind of sewer mains or water mains proposed to be constructed in such district and shall designate the outer boundaries of the district or districts in which it is proposed to construct the sewer mains or water mains.

Source: Laws 1969, c. 73, § 1, p. 397.

16-6,103 Districts; benefits; certification; connection fee.

After the sanitary sewer mains or water mains have been constructed in the districts, the cost thereof shall be reported to the city council and the council,

sitting as a board of equalization, shall determine benefits to abutting property. The special benefits as determined by the board of equalization shall not be levied as special assessments against the property within the district but shall be certified in a resolution of the city council to the register of deeds of the county in which the improvement district is constructed. A connection fee in the amount of the benefit accruing to the property in the district shall be paid to the city at the time such property becomes connected to the sewer main or water main. The city shall provide that no property thus benefited by sanitary sewer or water main improvements shall be connected to the sanitary sewer or water mains until the connection fee is paid.

Source: Laws 1969, c. 73, § 2, p. 397.

16-6,104 Construction of sewer and water mains; cost; payment; connection fees; use.

For the purpose of paying the cost of any such sanitary sewer mains or water mains constructed in any such connection district, the mayor and council may spend funds accumulated in any sanitary sewer or water department surplus funds of such city. The connection fees collected by any such city for properties connecting to such sanitary sewer mains or water mains shall be paid into the sanitary sewer or water department surplus fund to replenish such funds for the construction costs.

Source: Laws 1969, c. 73, § 3, p. 398.

16-6,105 Construction of sewer and water mains; cost; revenue bonds; issuance authorized.

As an alternative to spending surplus funds as provided in section 16-6,104, or to pay for part of any such construction, the mayor and council may issue revenue bonds. Such revenue bonds shall not impose any general liability upon the municipality but shall be secured by the revenue received by the municipality for the operation of the sanitary sewer system or waterworks system, and the amount of connection fees collected by the municipality for connections to such sanitary sewer mains or water mains. Such revenue bonds shall be sold for not less than par and bear interest at a rate not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature. The amount of such revenue bonds, either issued or outstanding, shall not be included in computing the maximum amount of bonds which the municipality may be authorized to issue under its charter or any statute of this state.

Source: Laws 1969, c. 73, § 4, p. 398; Laws 1980, LB 933, § 17; Laws 1981, LB 167, § 18.

(m) FLOOD CONTROL

16-6,106 Powers.

Cities of the first class are hereby authorized and empowered to develop and implement and from time to time amend, change, and modify a general plan or program of flood and storm water control, drainage, and disposal for such city. If the plan or program requires works of improvement outside of the city limits, it shall be submitted for review to the boards of the county or counties affected and to the Department of Natural Resources. To accomplish such purposes, or

any of them, the city may to the extent deemed needful or useful in the judgment of the city council:

(1) Procure and contract for professional and technical assistance of all kinds;

(2) Build, construct, alter, modify, and improve, using either its own employees, equipment, and facilities or by contract with others, dams, dikes, levees, drainways, channels, structures, devices, storm water sewers and systems, and works of all kinds and appurtenances thereto all without any limitation whatsoever, including extensions, additions, and improvements and alterations of any such existing facilities, for the control, management, drainage, and disposal of flood, storm, or surface waters, both within and without the city as in the discretion of the city council may be required for the protection, benefit, and welfare of the city and its inhabitants and their property; and

(3) Acquire by purchase, lease, gift, and contract and through the exercise of the right of eminent domain all lands, structures, easements, rights-of-way, or other property real or personal both within and without the city as may in the discretion of the city council be required or useful in connection with any such plan or program and the implementation thereof.

Source: Laws 1971, LB 57, § 1; Laws 2000, LB 900, § 64.

Cross References

For additional flood control powers of cities of the first class, see section 23-320.07.

16-6,107 Costs; financing.

For carrying out the purposes and powers set forth in section 16-6,106, including payment of the cost thereof, the city may:

(1) Borrow money and issue its negotiable general obligation bonds upon such terms and conditions as the mayor and council may determine, without a vote of the electors;

(2) Levy a tax upon all taxable property in the city to pay such bonds and interest thereon and establish a sinking fund for such payment;

(3) Issue warrants to contractors and others furnishing services or materials or in satisfaction of other obligations created under section 16-6,106, such warrants to be issued in such amounts and on such terms and conditions as the mayor and council shall determine, which warrants shall be redeemed and paid upon the sale of bonds or receipt of other funds available for such purpose;

(4) Receive gifts, grants and funds from any source, including, but not limited to, state, federal or private sources; and

(5) Cooperate and contract with any other government, governmental agency or political subdivision, whether state or federal, and any person or organization providing funds for the purposes covered by sections 16-6,106 to 16-6,109.

Source: Laws 1971, LB 57, § 2.

16-6,108 General obligation bonds; issuance; hearing.

The powers granted by sections 16-6,106 to 16-6,109 may be exercised in whole or in part and from time to time as the city council may in its discretion determine but before general obligation bonds are issued for the purposes of sections 16-6,106 to 16-6,109, the city council shall hold a public hearing after three weeks' notice published in a legal newspaper of general circulation in

such city, and the referendum provisions of sections 18-2501 to 18-2536 shall apply to any ordinance or resolution authorizing issuance of such bonds. The program for implementation of the plan may be adopted and carried out in parts, sections, or stages.

Source: Laws 1971, LB 57, § 3; Laws 1982, LB 807, § 42.

16-6,109 Sections; supplemental to other laws.

The powers granted by sections 16-6,106 to 16-6,109 are independent of and in addition to all other grants of powers on the same or related subjects but may be exercised jointly with or supplemented by the powers granted by existing legislation, including, but not limited to, sections 16-667 to 16-672.11, 16-680, 16-683, 16-693, 18-401 to 18-411, 18-501 to 18-512, 19-1305, 23-320.07 to 23-320.13, and 31-501 to 31-553 and the Combined Improvement Act.

Source: Laws 1971, LB 57, § 4; Laws 2003, LB 52, § 1.

Cross References

Combined Improvement Act, see section 19-2415.

(n) PUBLIC PASSENGER TRANSPORTATION SYSTEM

16-6,110 Acquisition of system; acceptance of funds; administration; powers.

A city of the first class shall have the power by ordinance to acquire, by the exercise of the power of eminent domain or otherwise, lease, purchase, construct, own, maintain, and operate, or contract for the operation of public passenger transportation systems, excluding railroad systems, including all property and facilities required therefor, within and without the limits of the city, to redeem such property from prior encumbrance in order to protect or preserve the interest of the city therein, to exercise all powers granted by the Constitution and laws of the State of Nebraska or exercised by or pursuant to a home rule charter adopted pursuant thereto, including but not limited to receiving and accepting from the government of the United States or any agency thereof, from the State of Nebraska, or any subdivision thereof, and from any person or corporation, donations, devises, gifts, bequests, loans, or grants for or in aid of the acquisition, operation, and maintenance of such public passenger transportation systems, and to administer, hold, use, and apply the same for the purposes for which such donations, devises, gifts, bequests, loans, or grants may have been made, to negotiate with employees and enter into contracts of employment, to employ by contract or otherwise individuals singularly or collectively, to enter into agreements authorized under the Interlocal Cooperation Act or the Joint Public Agency Act, to contract with an operating and management company for the purpose of operating, servicing, and maintaining any public passenger transportation systems any such city shall acquire under the provisions of sections 16-6,110 and 75-303, and to exercise such other and further powers with respect thereto as may be necessary, incident, or appropriate to the powers of such city.

Source: Laws 1973, LB 345, § 1; Laws 1975, LB 395, § 1; Laws 1999, LB 87, § 61.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

(o) WATER SUPPLY OR DISTRIBUTION FACILITY PROJECTS

16-6,111 Repealed. Laws 1999, LB 640, § 1.

16-6,112 Repealed. Laws 1999, LB 640, § 1.

16-6,113 Repealed. Laws 1999, LB 640, § 1.

16-6,114 Repealed. Laws 1999, LB 640, § 1.

16-6,115 Repealed. Laws 1999, LB 640, § 1.

16-6,116 Repealed. Laws 1999, LB 640, § 1.

ARTICLE 7

FISCAL MANAGEMENT, REVENUE, AND FINANCES

Section

16-701 Fiscal year, commencement.

In 1995, the fiscal period of each city of the first class commences on August 1, 1995, and extends through September 30, 1996. Thereafter, the fiscal year of

each city of the first class and of any public utility of a city of the first class commences on October 1 and extends through the following September 30 except as provided in the Municipal Proprietary Function Act.

Source: Laws 1901, c. 18, § 40, p. 242; R.S.1913, § 4972; C.S.1922, § 4141; C.S.1929, § 16-701; R.S.1943, § 16-701; Laws 1963, c. 67, § 1, p. 267; Laws 1995, LB 194, § 1.

Cross References

Municipal Proprietary Function Act, see section 18-2801.

16-702 Property tax; general purposes; levy; collection; maximum authorized; specific purposes; additional levies.

(1) Subject to the limits in section 77-3442, the mayor and council shall have power to levy and collect taxes for all municipal purposes on the taxable property within the corporate limits of the city. All city taxes, except special assessments otherwise provided for, shall become due on the first day of December of each year.

(2) At the time provided for by law, the council shall cause to be certified to the county clerk the amount of tax to be levied for purposes of the adopted budget statement on the taxable property within the corporation for the year then ensuing, as shown by the assessment roll for such year, including all special assessments and taxes assessed as hereinbefore provided. The clerk shall place the same on the proper tax list to be collected in the manner provided by law for the collection of county taxes in the county where such city is situated.

(3) In all sales for delinquent taxes for municipal purposes, if there are other delinquent taxes due from the same person or lien on the same property, the sales shall be for all the delinquent taxes. Such sales and all sales made under and by virtue of this section or the provisions of law herein referred to shall be of the same validity and, in all respects, shall be deemed and treated as though such sale had been made for the delinquent county taxes exclusively.

(4) The maximum amount of tax which may be certified, assessed, and collected for purposes of the adopted budget statement shall not require a tax levy in excess of eighty-seven and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property within such municipality. Any special assessments, special taxes, amounts assessed as taxes, and such sums as may be authorized by law to be levied for the payment of outstanding bonds and debts may be made by the council in addition to the levy of eighty-seven and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property within such municipality. The council may certify a further amount of tax to be levied which shall not require a tax levy in excess of seven cents on each one hundred dollars upon the taxable value of the taxable property within such city for the purpose of establishing the sinking fund or sinking funds authorized by sections 19-1301 to 19-1304, and in addition thereto, when required by section 18-501, a further levy of ten and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property within such city may be imposed.

(5) Nothing in this section shall be construed to authorize an increase in the amounts of levies for any specific municipal purpose or purposes elsewhere limited by law, whether limited in specific sums or by tax levies.

Source: Laws 1901, c. 18, § 82, p. 291; Laws 1903, c. 19, § 16, p. 245; R.S.1913, § 4973; C.S.1922, § 4142; Laws 1925, c. 37, § 1, p.

145; C.S.1929, § 16-702; Laws 1937, c. 176, § 3, p. 694; Laws 1939, c. 12, § 5, p. 82; Laws 1941, c. 157, § 5, p. 610; C.S.Supp.,1941, § 16-702; R.S.1943, § 16-702; Laws 1947, c. 29, § 2, p. 136; Laws 1953, c. 287, § 12, p. 936; Laws 1957, c. 39, § 1, p. 210; Laws 1969, c. 145, § 16, p. 681; Laws 1979, LB 187, § 45; Laws 1987, LB 441, § 1; Laws 1992, LB 1063, § 8; Laws 1992, Second Spec. Sess., LB 1, § 8; Laws 1996, LB 1114, § 28.

16-703 Repealed. Laws 1963, c. 481, § 4.

16-704 Annual appropriation bill; contents.

The city shall adopt a budget statement pursuant to the Nebraska Budget Act, to be termed ''The Annual Appropriation Bill'', in which corporate authorities may appropriate such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such corporations.

Source: Laws 1901, c. 18, § 41, p. 242; R.S.1913, § 4974; Laws 1917, c. 95, § 1, p. 257; C.S.1922, § 4143; Laws 1925, c. 37, § 2, p. 146; C.S.1929, § 16-703; R.S.1943, § 16-704; Laws 1993, LB 734, § 25; Laws 1995, LB 194, § 2.

Cross References

Nebraska Budget Act, see section 13-501.

Levy of taxes should be certified to the county clerk for levy by the county. McDonald v. Lincoln County, 141 Neb. 741, 4 N.W.2d 903 (1942).

The term ''government'' as used in the Constitution in relation to law governing cities of the first class is not limited to the administration of laws or regulation, but includes all activities engaged in lawfully by such city. Mutual Oil Co. v. Zehrung, 11 F.2d 887 (D. Neb. 1925).

16-705 Repealed. Laws 1976, LB 657, § 1.

16-706 Expenditures; how made; limitations; diversion of funds; violation; penalty; payment of judgments.

The mayor and council shall not have power to appropriate, issue, or draw any order or warrant on the treasurer for money, unless the same has been appropriated or ordered by ordinance or the claim for the payment of which such order or warrant is issued has been allowed according to sections 16-726 to 16-729, and a fund has been provided in the adopted budget statement out of which such claim is payable. Any transfer or diversion of the money or credits from any of the funds to another fund or to a purpose other and different from that for which proposed, except as provided in section 16-721, shall render any city council member voting therefor or any officer of the corporation participating therein guilty of a misdemeanor, and any person shall, upon conviction thereof, be fined twenty-five dollars for each offense, together with costs of prosecution. Should any judgment be obtained against the corporation, the mayor and finance committee, with the sanction of the city council, may borrow a sufficient amount to pay the same, for a period of time not to extend beyond the close of the next fiscal year, which sum and interest thereon shall, in like manner, be added to the amount authorized to be raised in the general tax levy of the next year and embraced therein.

Source: Laws 1901, c. 18, § 43, p. 243; R.S.1913, § 4976; C.S.1922, § 4145; C.S.1929, § 16-705; Laws 1935, Spec. Sess., c. 10, § 11, p. 78; Laws 1941, c. 130, § 17, p. 501; C.S.Supp.,1941, § 16-705;

R.S.1943, § 16-706; Laws 1959, c. 63, § 1, p. 282; Laws 1961, c. 40, § 2, p. 168; Laws 1969, c. 145, § 17, p. 682; Laws 1987, LB 652, § 3.

Where city has in its general funds sufficient unappropriated funds, it may use the same for the creation of a lighting system, if sanctioned by a majority of the electors, even where there was no provision therefor in the annual appropriation bill. Christensen v. City of Fremont, 45 Neb. 160, 63 N.W. 364 (1895).

16-707 Board of equalization; meetings; notice; hearings; special assessments; grounds for review.

The mayor and council shall meet as a board of equalization on the first Monday in June of each year and at such other times as they shall determine to be necessary, giving notice of any such sitting at least ten days prior thereto by publication in a newspaper having general circulation in the city. When so assembled they shall have power to equalize all special assessments, not herein otherwise provided for, and to supply any omissions in the same; and at such meeting the assessments shall be finally levied by them. A majority of all the members elected to the council shall constitute a quorum for the transaction of any business properly brought before them, but a less number may adjourn from time to time and compel the attendance of absent members. When sitting as a board of equalization on special taxes, the council may adopt such reasonable rules as to the manner of presenting complaints and applying for remedies and relief as shall seem just. It shall not invalidate or prejudice the proceedings of the board that a majority of the members thereof do not, after organization by a majority, continue present during the advertised hours of sitting, provided the city clerk or some member of the board shall be present to receive complaints and applications, and give information; *Provided,* no final action shall be taken by the board except by a majority of all the members elected to the city council comprising the same, and in open session. All the special taxes herein authorized shall be levied and assessed on all lots, parts of lots, lands, and real estate to the extent of the special benefit to such lots, parts of lots, lands and real estate, by reason of such improvement, such benefits to be determined by the council sitting as a board of equalization, or as otherwise herein provided, after publication and notice to property owners herein provided. In cases where the council sitting as a board of equalization shall find such benefits to be equal and uniform, such assessments may be according to the feet frontage and may be prorated and scaled back from the line of such improvement according to such rules as the board of equalization may consider fair and equitable; and all such assessments and findings of benefits shall not be subject to review in any equitable or legal action except for fraud, injustice or mistake.

Source: Laws 1901, c. 18, § 83, p. 292; Laws 1903, c. 19, § 17, p. 246; Laws 1905, c. 23, § 3, p. 246; R.S.1913, § 4977; C.S.1922, § 4146; C.S.1929, § 16-706.

A city of the first class has statutory authority to create water district and to levy assessments for the payment of the cost thereof. Wiborg v. City of Norfolk, 176 Neb. 825, 127 N.W.2d 499 (1964).

A notice of time and place of meeting of council as a board of equalization, to equalize special assessments to pay for paving published in a newspaper of general circulation within the city from 17th to the 27th of the month inclusive, the last day being the date of hearing, is a substantial compliance with the section. Lanning v. City of Hastings, 93 Neb. 665, 141 N.W. 817 (1913).

Notice of hearing is jurisdictional. Cook v. Gage County, 65 Neb. 611, 91 N.W. 559 (1902).

16-708 Special assessments; invalidity; reassessment.

Whenever any special tax or assessment upon any lot or lots, lands or parcels of land in a city of the first class is found to be invalid and uncollectible, or

shall be adjudged to be void by a court of competent jurisdiction, or paid under protest and recovered by suit, because of any defect, irregularity or invalidity in any of the proceedings or on account of the failure to observe and comply with any of the conditions, prerequisites and requirements of any statute or ordinance, the mayor and council shall have the power to relevy the same upon the said lot or lots, lands or parcels of land in the same manner as other special taxes and assessments are levied, without regard to whether the formalities, prerequisites or conditions prior to equalization have been had or not.

Source: Laws 1925, c. 47, § 1, p. 187; C.S.1929, § 16-707.

Reassessment of benefits is provided for when original assessment is invalid. Shanahan v. Johnson, 170 Neb. 399, 102 N.W.2d 858 (1960).

16-708.01 Special assessments; illegal annexation; validation.

Whenever a city of the first class lawfully reannexes territory which it had formerly annexed but which annexation was illegal because the statutes under which such original annexation was made were unconstitutional and void, (1) all special assessments levied by such city of the first class with respect to such territory shall be validated, binding and legal upon such city of the first class and the inhabitants of such territory in the same manner as if the original annexation had been lawful, (2) all zoning, special use permits and contracts for municipal services made or entered into with respect to such territory by such city of the first class shall be validated, binding and legal upon such city of the first class and the inhabitants of such territory in the same manner as if the original annexation had been lawful, (3) any prior actions by any officials of such city of the first class, including the election of council members from such territory or a part thereof shall be validated, binding and legal upon such city of the first class and the inhabitants of such territory in the same manner as if the original annexation had been lawful, and (4) such city of the first class shall have power to assess or reassess and levy or relevy new assessments equal to the special benefits and not exceeding the cost of improvements for which any assessment was originally made upon such territory to be made in substantially the manner provided for making original assessments of like nature and when so made, shall constitute a lien upon the property prior and superior to all other liens except liens for other special assessments, and taxes or special assessments so assessed or reassessed shall be enforced and collected as other special taxes, and in making such assessment or reassessment, the city council sitting as a board of equalization and assessment shall take into consideration payments, if any, made on behalf of the property reassessed under assessments made prior to the reannexation.

Source: Laws 1967, c. 62, § 1, p. 210.

16-709 Special assessments; irregularities; correction.

In cases of any omission, mistake, defect or irregularity in the preliminary proceedings on any special assessment in a city of the first class, the city council shall have power to correct such mistake, omission, defect or irregularity, and levy or relevy, as the case may be, a special assessment on any or all property in the district, in accordance with the special benefits received and damages sustained to the property on account of such improvement as found by the council sitting as a board of equalization. The city council shall deduct from

the benefits and allow as a credit, before such relevy, an amount equal to the sum of the installments paid in the original levy.

Source: Laws 1925, c. 47, § 2, p. 188; C.S.1929, § 16-708.

16-710 Repealed. Laws 1967, c. 58, § 2.

16-711 Road tax; how used and expended.

All money arising from the levying of road tax against or upon property in said city shall belong to the city and shall be expended upon the streets and grades in such city; *Provided*, this section shall not apply and has not heretofore applied to the disposition of money collected by levy of county road tax; *and provided further*, that all money which was collected before March 11, 1935, by any county under township organization from the levy of county road tax against or upon the property in said city and which has not been paid to said city shall belong to the county, and no part thereof need be paid to said city; *provided further*, that section 49-301 shall not apply to preserve to any city any right which said city may have had or claimed with respect to said money heretofore collected by any county under township organization from the levy of county road tax against or upon the property in said city and which has not been paid to said city; *and provided further*, that the provisions of this section shall be held and taken to apply to any case brought in any court in this state.

Source: Laws 1901, c. 18, § 87, p. 294; Laws 1907, c. 13, § 1, p. 120; R.S.1913, § 4979; C.S.1922, § 4148; C.S.1929, § 16-710; Laws 1935, c. 31, § 1, p. 135; C.S.Supp.,1941, § 16-710.

The amendment of statute without saving clause, during course of city's litigation for transfer of road funds, is fatal to all rights based on original statute not retained in the amended statute. City of Beatrice v. Gage County, 130 Neb. 850, 266 N.W. 777 (1936).

16-712 City funds; depositories; payment; conflict of interest.

The city treasurer shall deposit, and at all times keep on deposit, for safekeeping, in banks, capital stock financial institutions, or qualifying mutual financial institutions of approved and responsible standing, all money collected, received, or held by him or her as city treasurer. Such deposits shall be subject to all regulations imposed by law or adopted by the city council for the receiving and holding thereof. The fact that a stockholder, director, or other officer of such bank, capital stock financial institution, or qualifying mutual financial institution shall also be serving as mayor, as a member of the city council, as a member of a board of public works, or as any other officer of such municipality shall not disqualify such bank, capital stock financial institution, or qualifying mutual financial institution from acting as a depository for such municipal funds. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1901, c. 18, § 84, p. 293; R.S.1913, § 4980; C.S.1922, § 4149; C.S.1929, § 16-711; Laws 1935, c. 140, § 3, p. 516; C.S.Supp.,1941, § 16-711; R.S.1943, § 16-712; Laws 1957, c. 54, § 2, p. 263; Laws 1959, c. 48, § 1, p. 235; Laws 1969, c. 84, § 3, p. 425; Laws 1989, LB 33, § 18; Laws 1996, LB 1274, § 18; Laws 2001, LB 362, § 19.

16-713 City funds; certificates of deposit; time deposits; security required.

The city treasurer may, upon resolution of the mayor and council authorizing the same, purchase certificates of deposit from and make time deposits in banks, capital stock financial institutions, or qualifying mutual financial institutions selected as depositories of city funds under the provisions of sections 16-712, 16-714, and 16-715. The certificates of deposit purchased and time deposits made shall bear interest and shall be secured as set forth in sections 16-714 and 16-715, except that the penal sum of such bond or the sum of such security shall be reduced in the amount of the time deposit or certificate of deposit insured by the Federal Deposit Insurance Corporation. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1901, c. 18, § 85, p. 293; R.S.1913, § 4981; C.S.1922, § 4150; C.S.1929, § 16-712; R.S.1943, § 16-713; Laws 1959, c. 48, § 2, p. 235; Laws 1969, c. 84, § 4, p. 425; Laws 1989, LB 33, § 19; Laws 1992, LB 757, § 17; Laws 1996, LB 1274, § 19; Laws 2001, LB 362, § 20.

16-714 City funds; depository bond; conditions.

For the security of the fund so deposited, the city treasurer shall require each depository to give bond for the safekeeping and payment of such deposits and the accretions thereof, which bond shall run to the city and be approved by the mayor. Such bond shall be conditioned that such a depository shall, at the end of every quarter, render to the treasurer a statement in duplicate, showing the several daily balances, the amount of money of the city held by it during the quarter, the amount of the accretion thereto, and how credited. The bond shall also be conditioned that the depository shall generally do and perform whatever may be required by the provisions of sections 16-712 to 16-715 and faithfully discharge the trust reposed in such depository. Such bond shall be as nearly as practicable in the form provided in section 77-2304. No person in any way connected with any depository as an officer or stockholder shall be accepted as a surety on any bond given by the depository of which he or she is an officer or stockholder. Such bond shall be deposited with the city clerk. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1901, c. 18, § 86, p. 294; R.S.1913, § 4982; C.S.1922, § 4151; C.S.1929, § 16-713; Laws 1931, c. 28, § 1, p. 115; Laws 1937, c. 22, § 1, p. 134; C.S.Supp.,1941, § 16-713; R.S.1943, § 16-714; Laws 1969, c. 84, § 5, p. 426; Laws 1989, LB 33, § 20; Laws 2001, LB 362, § 21.

16-715 City funds; depository; security in lieu of bond; authorized.

In lieu of the bond required by section 16-714, any bank, capital stock financial institution, or qualifying mutual financial institution making application to become a depository may give security as provided in the Public Funds Deposit Security Act to the city clerk. The penal sum of such bond shall be equal to or greater than the amount of the deposit in excess of that portion of such deposit insured by the Federal Deposit Insurance Corporation. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1931, c. 28, § 1, p. 116; Laws 1937, c. 22, § 1, p. 135; C.S.Supp.,1941, § 16-713; R.S.1943, § 16-715; Laws 1959, c.

263, § 5, p. 926; Laws 1969, c. 84, § 6, p. 426; Laws 1972, LB 1152, § 1; Laws 1977, LB 266, § 1; Laws 1987, LB 440, § 7; Laws 1989, LB 33, § 21; Laws 1989, LB 377, § 10; Laws 1992, LB 757, § 18; Laws 1996, LB 1274, § 20; Laws 2001, LB 362, § 22.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

This section permits banks to pledge certain securities to secure deposits of a city of the first class. Luikart v. City of Aurora, 125 Neb. 263, 249 N.W. 590 (1933).

16-716 City funds; depositories; maximum deposits; liability of treasurer.

The treasurer shall not have on deposit in any bank, capital stock financial institution, or qualifying mutual financial institution at any time more than the amount insured by the Federal Deposit Insurance Corporation plus the maximum amount of the bond given by the bank, capital stock financial institution, or qualifying mutual financial institution if the bank, capital stock financial institution, or qualifying mutual financial institution gives a surety bond, nor in any bank, capital stock financial institution, or qualifying mutual financial institution giving a personal bond, more than the amount insured by the Federal Deposit Insurance Corporation plus one-half of the amount of the bond of such bank, capital stock financial institution, or qualifying mutual financial institution, and the amount so on deposit any time with any such bank, capital stock financial institution, or qualifying mutual financial institution shall not in either case exceed the amount insured by the Federal Deposit Insurance Corporation plus the paid-up capital stock and surplus of such bank, capital stock financial institution, or qualifying mutual financial institution.

The city treasurer shall not be liable for any loss sustained by reason of the failure of any such bonded depository whose bond has been duly approved by the mayor as provided in section 16-714 or which has, in lieu of a surety bond, given security as provided in section 16-715.

Source: Laws 1901, c. 18, § 86, p. 294; R.S.1913, § 4982; C.S.1922, § 4151; C.S.1929, § 16-713; Laws 1931, c. 28, § 1, p. 116; Laws 1937, c. 22, § 1, p. 135; C.S.Supp.,1941, § 16-713; R.S.1943, § 16-716; Laws 1981, LB 491, § 1; Laws 1993, LB 157, § 2; Laws 1996, LB 1274, § 21; Laws 2001, LB 362, § 23; Laws 2002, LB 860, § 1.

16-717 City treasurer; books and accounts.

The city treasurer shall receive all money belonging to the city, and the clerk and treasurer shall keep their books and accounts in such a manner as the mayor and council shall prescribe. The treasurer shall keep a daily cash book, which shall be footed and balanced daily; and such books and accounts shall always be subject to inspection of the mayor, members of the council, and such other persons as they may designate.

Source: Laws 1901, c. 18, § 88, p. 295; R.S.1913, § 4983; C.S.1922, § 4152; C.S.1929, § 16-714.

16-718 City treasurer; warrants; issuance; delivery.

Upon allowance of a claim by the council the order for the payment thereof shall specify the particular fund out of which it is payable as specified in the adopted budget statement, and no order or warrant shall be drawn in excess of eighty-five percent of the current levy for the purpose for which it is drawn unless there shall be sufficient money in the treasury to the credit of the proper fund for its payment, and no claim shall be audited or allowed except an order or warrant for the payment thereof may legally be drawn. All warrants drawn upon the treasury must be signed by the mayor and countersigned by the clerk, and shall state the particular fund to which the same is chargeable, the person to whom payable, and for what particular object. No money shall be otherwise paid than upon such warrant so drawn. Such warrants may be delivered immediately when so drawn.

Source: Laws 1901, c. 18, § 89, p. 295; Laws 1909, c. 19, § 1, p. 186; R.S.1913, § 4984; C.S.1922, § 4153; C.S.1929, § 16-715; R.S. 1943, § 16-718; Laws 1963, c. 68, § 1, p. 268; Laws 1969, c. 145, § 18, p. 683.

16-719 City treasurer; conversion of funds; penalty.

The treasurer shall keep all money in his hands belonging to the city separate and distinct from his own money; and he is hereby expressly prohibited from using, either directly or indirectly, the corporation money or warrants in his custody and keeping for his own use and benefit or that of any other person whomsoever. Any violation of this provision shall subject him to immediate removal from office by the city council, and it may declare such office vacant. The mayor shall appoint a successor, who shall be confirmed by the city council, to hold office for the remainder of the term.

Source: Laws 1901, c. 18, § 90, p. 295; R.S.1913, § 4985; C.S.1922, § 4154; C.S.1929, § 16-716.

16-720 City treasurer; report; warrant register.

The treasurer shall report to the mayor and council annually, and more often if required, at such times as may be prescribed by ordinance, giving a full and detailed account of the receipts and expenditures during the preceding fiscal year, and the state of the treasury. He shall also keep a register of all warrants redeemed and paid during the year, describing such warrants, their date, amount, number, time of payment, the fund from which paid, and the person to whom paid. All such warrants shall be examined by the finance committee at the time of making such annual report.

Source: Laws 1901, c. 18, § 91, p. 296; R.S.1913, § 4986; C.S.1922, § 4155; C.S.1929, § 16-717.

16-721 City funds; transfer; when authorized.

Each fund created by this chapter shall be strictly devoted to the purpose for which it was created and shall not be diverted therefrom; *Provided, however,* when the city council by a three-fourths vote of the members thereof, shall declare the expenditure of any fund for the purpose for which it was created to be unwise and impracticable or where the purpose thereof has been fully accomplished and the whole fund or an unexpired balance thereof remains, and no indebtedness has been incurred on account of such fund which has not

been fully paid, such fund may be transferred to any other fund of the city by the affirmative vote of three-fourths of all the members of the council.

Source: Laws 1901, c. 18, § 92, p. 296; Laws 1903, c. 19, § 18, p. 247; R.S.1913, § 4987; C.S.1922, § 4156; C.S.1929, § 16-718.

16-722 City receipts and expenditures; publication.

The mayor and council shall cause to be published semiannually a statement of the receipts of the city and an itemized account of the expenditures of the city.

Source: Laws 1901, c. 18, § 93, p. 296; R.S.1913, § 4988; C.S.1922, § 4157; C.S.1929, § 16-719; R.S.1943, § 16-722; Laws 1992, LB 415, § 1.

Cross References

Receipts and expenditures, publication requirements, village or city having population of not more than one hundred thousand, see section 19-1101.

16-723 Taxes; payable in cash; sinking fund; investment; matured bonds or coupons; payment.

All taxes levied for the purpose of raising money to pay the interest or to create a sinking fund for the payment of the principal of any funded or bonded debt of the city shall be payable in money only. Except as otherwise expressly provided, no money so obtained shall be used for any other purpose than the payment of the interest or debt for the payment of which it shall have been raised; *Provided,* such sinking fund may, under the direction of the mayor and council, be invested in any of the unmatured bonds issued by the city, provided they can be procured by the treasurer at such rate or premium as shall be prescribed by ordinance. Any due or overdue bond or coupon shall be a sufficient warrant or order for the payment of the same by the treasurer out of any fund especially created for that purpose without any further order or allowance by the mayor or council.

Source: Laws 1901, c. 18, § 96, p. 297; R.S.1913, § 4989; C.S.1922, § 4158; C.S.1929, § 16-720.

16-724 Repealed. Laws 1983, LB 421, § 18.

16-725 Repealed. Laws 1955, c. 37, § 2.

16-726 Claims and accounts payable; filing; requirements; disallowance; notice; costs.

All liquidated and unliquidated claims and accounts payable against a city of the first class shall: (1) Be presented in writing; (2) state the name and address of the claimant and the amount of the claim; and (3) fully and accurately identify the items or services for which payment is claimed or the time, place, nature, and circumstances giving rise to the claim.

As a condition precedent to maintaining an action for a claim, other than a tort claim as defined in section 13-903, the claimant shall file such claim within ninety days of the accrual of the claim in the office of the city clerk.

The city clerk shall notify the claimant or his or her agent or attorney by letter mailed to the claimant's address within five days if the claim is disallowed by the city council.

No costs shall be recovered against such city in any action brought against it for any claim or for any claim allowed in part which has not been presented to the city council to be audited, unless the recovery is for a greater sum than the amount allowed with the interest due.

Source: Laws 1901, c. 18, § 38, p. 240; Laws 1903, c. 19, § 6, p. 236; Laws 1907, c. 13, § 1, p. 109; R.S.1913, § 4991; C.S.1922, § 4160; C.S.1929, § 16-722; R.S.1943, § 16-726; Laws 1955, c. 37, § 1, p. 150; Laws 1990, LB 1044, § 1.

The 90-day ''condition precedent'' under this section is a procedural precedent to commencement of a claim, and noncompliance is an affirmative defense which must be raised before the first tribunal or agency charged with determining the cause of action or the defense is waived. Crown Products Co. v. City of Ralston, 253 Neb. 1, 567 N.W.2d 294 (1997).

16-727 Claims; disallowance; appeal to district court; procedure.

When the claim of any person against the city, except a tort claim as defined in section 13-903, is disallowed in whole or in part by the council, such person may appeal from the decision of the city council to the district court of the same county by causing a written notice to be served on the city clerk within twenty days after making such decision and executing a bond to such city, with good and sufficient sureties to be approved by the city clerk, conditioned for the faithful prosecution of such appeal and the payment of all costs that may be adjudged against the appellant.

Source: Laws 1901, c. 18, § 38, p. 240; Laws 1903, c. 19, § 6, p. 236; Laws 1907, c. 13, § 1, p. 109; R.S.1913, § 4991; C.S.1922, § 4160; C.S.1929, § 16-722; R.S.1943, § 16-727; Laws 1969, c. 138, § 22, p. 635.

Plaintiff failed to file a petition in district court within 50 days of denial of his claim, and therefore, became nonsuited. Fisher v. City of Grand Island, 239 Neb. 929, 479 N.W.2d 772 (1992).

16-728 Claims; allowance; appeal by taxpayer.

Any taxpayer may likewise appeal from the allowance of any claim against the city, except a tort claim as defined in section 13-903, by serving a written notice upon the city clerk within ten days from said allowance and giving bond similar to that provided for in section 16-727; *Provided,* when the council, by ordinance, provides for the publication of the list of the claims allowed, giving the amounts allowed and the names of the persons to whom allowed, in a newspaper printed and published and of general circulation in such city, such appeal may be taken by a taxpayer by serving a notice thereof within such time after such publication as may be fixed by such ordinance, and giving bond for such appeal within ten days after such allowance.

Source: Laws 1901, c. 18, § 38, p. 241; Laws 1903, c. 19, § 6, p. 236; Laws 1907, c. 13, § 1, p. 109; R.S.1913, § 4991; C.S.1922, § 4160; C.S.1929, § 16-722; R.S.1943, § 16-728; Laws 1969, c. 138, § 23, p. 635.

16-729 Claims; disallowance; appeal; transcript; trial.

The clerk, upon such appeal being taken and being paid the proper fees therefor, including fees for filing the same in the district court, shall make out a transcript of the proceedings of the council, mayor, and other officers as relate to the presentation and allowance or disallowance of such claim and shall file it with the clerk of the district court within thirty days after the decision allowing

or disallowing the claim and paying the proper commencement fees. Such appeal shall be entered on the docket of the court, tried, and determined and costs awarded thereon in the manner provided in sections 25-1901 to 25-1937. No appeal bond shall be required of the city by any court in the case of an appeal by the city, and judgment shall be stayed pending such appeal.

Source: Laws 1901, c. 18, § 38, p. 241; Laws 1903, c. 19, § 6, p. 236; Laws 1907, c. 13, § 1, p. 110; R.S.1913, § 4991; C.S.1922, § 4160; C.S.1929, § 16-722; R.S.1943, § 16-729; Laws 1991, LB 1, § 1.

16-730 Repealed. Laws 1965, c. 77, § 2.

16-731 County treasurer; monthly payment of bond fund money; when.

Any city of the first class may request that bond fund money be included with payments distributed under subsection (3) of section 23-1601. Such bond fund money shall be included in the monthly payment until notified otherwise by the city.

Source: Laws 1978, LB 847, § 2.

ARTICLE 8

OFFSTREET PARKING

Cross References

Offstreet Parking District Act, see section 19-3301.

Section
16-801. Offstreet parking; purpose.
16-802. Grant of power.
16-803. Acquisition of property and facilities; cost; revenue bonds; interest; issuance; revenue pledged.
16-804. Revenue bonds; plans and specifications; engineer.
16-805. Governing body; rules and regulations; rates and charges; adopt.
16-806. Ordinance; publication; objections; submission to electors; election; notice.
16-807. Lease of facilities; competitive bidding.
16-808. Property not subject to condemnation.
16-809. Revenue bonds; rights of holders.
16-810. Revenue bonds; onstreet parking meters; revenue; use; exception.
16-811. Sections; supplementary to existing law.
16-812. Transferred to section 19-3301.
16-813. Transferred to section 19-3302.
16-814. Transferred to section 19-3303.
16-815. Transferred to section 19-3304.
16-816. Transferred to section 19-3305.
16-817. Transferred to section 19-3306.
16-818. Transferred to section 19-3307.
16-819. Transferred to section 19-3308.
16-820. Transferred to section 19-3309.
16-821. Transferred to section 19-3310.
16-822. Transferred to section 19-3311.
16-823. Transferred to section 19-3312.
16-824. Transferred to section 19-3313.
16-825. Transferred to section 19-3314.
16-826. Transferred to section 19-3315.
16-827. Transferred to section 19-3316.
16-828. Transferred to section 19-3317.
16-829. Transferred to section 19-3318.
16-830. Transferred to section 19-3319.

Section
16-831. Transferred to section 19-3320.
16-832. Transferred to section 19-3321.
16-833. Transferred to section 19-3322.
16-834. Transferred to section 19-3323.
16-835. Transferred to section 19-3324.
16-836. Transferred to section 19-3325.
16-837. Transferred to section 19-3326.

16-801 Offstreet parking; purpose.

State recognition is hereby given to the hazard created in the streets of cities of the first class of Nebraska by the great increase in the number of motor vehicles, buses, and trucks. In order to remove or reduce the hazards to life and property and the inconvenience of congested traffic on the streets in such cities in this state, it is hereby deemed necessary and of general benefit to the entire State of Nebraska to provide means for such cities in Nebraska to own offstreet vehicle parking facilities exclusively for the parking of motor vehicles.

Source: Laws 1955, c. 35, § 1, p. 143.

16-802 Grant of power.

Any city of the first class in Nebraska is hereby authorized to own, purchase, construct, equip, lease, or operate within such city offstreet motor vehicle parking facilities for the use of the general public. The grant of power herein does not include the power to engage, directly or indirectly, in the sale of gasoline, oil, or other merchandise or in the furnishing of any service other than that of parking motor vehicles as provided herein. Any such city shall have the authority to acquire by grant, contract, or purchase or through the condemnation of property, as provided by law for such acquisition, all real or personal property, including a site or sites on which to construct the facilities necessary or convenient in the carrying out of this grant of power. Before any such city may commence a program to construct, purchase, or acquire by other means a proposed offstreet parking facility or facilities, notice shall be given, by publication once each week for not less than three weeks, inviting application for private ownership and operation of offstreet parking facilities. If no application or applications have been received or, if received, the same have been disapproved by the governing body of such city within ninety days from the first date of publication, then such city may proceed in the exercise of the powers herein granted.

Source: Laws 1955, c. 35, § 2, p. 144; Laws 1996, LB 299, § 13.

16-803 Acquisition of property and facilities; cost; revenue bonds; interest; issuance; revenue pledged.

In order to pay the cost required by any purchase, construction, lease, or condemnation of property and equipping of such facilities, or the enlargement of presently owned facilities, or to pay a portion of the cost of such facilities purchased or constructed pursuant to sections 19-3301 to 19-3326, the city may issue revenue bonds to provide the funds for such improvements. Such revenue bonds shall not be payable from any general tax upon the issuing municipality, but shall be a lien only upon the revenue and earnings of the parking facilities. Such revenue bonds may be issued at an interest cost to maturity set by the city council and shall mature in not to exceed forty years but may be optional prior

to maturity at a premium as provided in the authorizing resolution or ordinance. Any such revenue bonds which may be issued shall not be included in computing the maximum amount of bonds which the issuing city of the first class may be authorized to issue under its charter or any statute of this state. Such revenue bonds may be issued and sold or delivered to the contractor at par and accrued interest for the amount of work performed. If any city has installed or installs onstreet parking meters, it may pledge all or any part of the revenue of such parking meters, not previously pledged, as security for the bonds herein authorized.

Source: Laws 1955, c. 35, § 3, p. 144; Laws 1969, c. 88, § 27, p. 450; Laws 1969, c. 51, § 40, p. 296.

16-804 Revenue bonds; plans and specifications; engineer.

Before the issuance of any revenue bonds the city of the first class shall have an independent and qualified firm of engineers prepare plans and specifications for such improvements. In the preparation of the plans and specifications, the independent engineer shall collaborate and counsel with any city engineering or traffic departments so as to coordinate the program with the program for the control of traffic within such respective city.

Source: Laws 1955, c. 35, § 4, p. 145.

16-805 Governing body; rules and regulations; rates and charges; adopt.

The governing body of any such city of the first class shall make all necessary rules and regulations governing the use, operation, and control thereof. In the exercise of the grant of power herein set forth, the city of the first class may make contracts with other departments of the city, or others, if such contracts are necessary and needed for the payment of the revenue bonds authorized herein and for the successful operation of the parking facilities. The governing board shall also establish and maintain equitable rates or charges for such services sufficient in amount to pay for the cost of operation, repair, and upkeep of the facilities to be purchased, acquired, or leased, and the principal of and interest on any revenue bonds issued pursuant to the provisions of sections 16-801 to 16-811. The governing body may also make any other agreements with the purchasers of the bonds for the security of the issuing city and the purchasers of such bonds not in contravention with the provisions of sections 16-801 to 16-811.

Source: Laws 1955, c. 35, § 5, p. 145.

16-806 Ordinance; publication; objections; submission to electors; election; notice.

The mayor and council of a city of the first class may adopt by ordinance the proposition to make such purchase or to erect such facility or facilities as set forth in section 16-802, and before the purchase can be made or facility created, the council shall publish in a legal newspaper having a general circulation in the city the location of the proposed offstreet motor vehicle parking facility or facilities, the proposed cost, and the total amount of the bonds to be issued. If the electors of such city, equal in number to five percent of the electors of such city voting at the last preceding general municipal election, file a written objection or objections to the proposed issuance of revenue bonds within sixty days after the adoption of such ordinance, the

governing body must submit the question to the electors of such city at a general municipal election or at an election duly called for that purpose and be approved by a majority of the electors voting on such question. If the question is submitted at a special election, the vote for the purchase or acquisition of such real estate or the purchase or erection of such facility or facilities shall equal at least a majority of the votes cast at the last preceding general election. Notice of the time and place of the election shall be given by publication in some legal newspaper printed and in general circulation in such city three successive weeks prior thereto.

Source: Laws 1955, c. 35, § 6, p. 146; Laws 1957, c. 27, § 1, p. 181.

16-807 Lease of facilities; competitive bidding.

On the creation of such motor vehicle parking facility for the use of the general public, the city may if it desires lease such facility to one or more operators to provide for the efficient operation of the facility. Such lease shall be let on a competitive basis and no lease shall run for a period in excess of ten years. In granting any lease, the city shall retain such control of the facility as may be necessary to insure that the facility will be properly operated in the public interest and that the prices charged are reasonable. The provisions of sections 16-801 to 16-811 shall not be construed to authorize the city or the lessee of the facility to engage in the sale of any commodity, product, or service, or to engage in any business other than the purposes set forth in section 16-802.

Source: Laws 1955, c. 35, § 7, p. 146.

16-808 Property not subject to condemnation.

Property now used or hereafter acquired for offstreet motor vehicle parking by a private operator shall not be subject to condemnation.

Source: Laws 1955, c. 35, § 8, p. 146.

16-809 Revenue bonds; rights of holders.

The provisions of sections 16-801 to 16-811 and of any ordinance authorizing the issuance of bonds under the provisions of sections 16-801 to 16-811 shall constitute a contract with the holders of such bonds, and any holder of a bond or bonds or any of the coupons of any bond or bonds of such municipality, issued under the provisions of sections 16-801 to 16-811, may either in law or in equity, by suit, action, mandamus, or other proceedings, enforce and compel the performance of all duties required by the provisions of sections 16-801 to 16-811 or by the ordinance authorizing the bonds, including the making and collection of sufficient charges and fees for service and the use thereof, and the application of income and revenue thereof.

Source: Laws 1955, c. 35, § 9, p. 146.

16-810 Revenue bonds; onstreet parking meters; revenue; use; exception.

Any city of the first class is authorized to use any or all of the revenue from onstreet parking meters for the purpose set forth in section 16-802 if such revenue has not been pledged for the payment of revenue bonds authorized herein.

Source: Laws 1955, c. 35, § 10, p. 147.

16-811 Sections; supplementary to existing law.

Sections 16-801 to 16-811 are supplementary to existing statutes relating to cities of the first class and confer upon such cities powers not heretofore granted.

Source: Laws 1955, c. 35, § 11, p. 147.

16-812 Transferred to section 19-3301.

16-813 Transferred to section 19-3302.

16-814 Transferred to section 19-3303.

16-815 Transferred to section 19-3304.

16-816 Transferred to section 19-3305.

16-817 Transferred to section 19-3306.

16-818 Transferred to section 19-3307.

16-819 Transferred to section 19-3308.

16-820 Transferred to section 19-3309.

16-821 Transferred to section 19-3310.

16-822 Transferred to section 19-3311.

16-823 Transferred to section 19-3312.

16-824 Transferred to section 19-3313.

16-825 Transferred to section 19-3314.

16-826 Transferred to section 19-3315.

16-827 Transferred to section 19-3316.

16-828 Transferred to section 19-3317.

16-829 Transferred to section 19-3318.

16-830 Transferred to section 19-3319.

16-831 Transferred to section 19-3320.

16-832 Transferred to section 19-3321.

16-833 Transferred to section 19-3322.

16-834 Transferred to section 19-3323.

16-835 Transferred to section 19-3324.

16-836 Transferred to section 19-3325.

16-837 Transferred to section 19-3326.

ARTICLE 9
SUBURBAN DEVELOPMENT

Section
16-901. Zoning regulations; building ordinances; public utility codes; extension.
16-902. Designation of jurisdiction; subdivision; platting; consent required; review by county planning commission; when required.
16-903. Platting; recording; city council; powers.
16-904. Conformity with ordinance; dedication of avenues, streets, and alleys.
16-905. Designation of jurisdiction; how described.

16-901 Zoning regulations; building ordinances; public utility codes; extension.

Except as provided in section 13-327, any city of the first class may apply by ordinance any existing or future zoning regulations, property use regulations, building ordinances, electrical ordinances, plumbing ordinances, and ordinances authorized by section 16-240 to the unincorporated area two miles beyond and adjacent to its corporate boundaries with the same force and effect as if such outlying area were within the corporate limits of such city, except that no such ordinance shall be extended or applied so as to prohibit, prevent, or interfere with the conduct of existing farming, livestock operations, businesses, or industry. For purposes of sections 70-1001 to 70-1020, the zoning area of a city of the first class shall be one mile beyond and adjacent to the corporate area. The fact that such unincorporated area is located in a different county or counties than some or all portions of the municipality shall not be construed as affecting the powers of the city to apply such ordinances.

Source: Laws 1957, c. 28, § 1, p. 183; Laws 1967, c. 70, § 1, p. 232; Laws 1967, c. 75, § 1, p. 242; Laws 1988, LB 934, § 5; Laws 2002, LB 729, § 3.

A city is exercising control and county zoning regulations are superseded if the city adopts an ordinance with respect to territory within the extraterritorial jurisdiction, and it is not necessary that the city designate each particular piece of property within that jurisdiction. County of Dakota v. Worldwide Truck Parts & Metals, 245 Neb. 196, 511 N.W.2d 769 (1994).

16-902 Designation of jurisdiction; subdivision; platting; consent required; review by county planning commission; when required.

(1) Except as provided in section 13-327, a city of the first class may designate by ordinance the portion of the territory located within two miles of the corporate limits of the city and outside of any other organized city or village within which the designating city will exercise the powers and duties granted by sections 16-902 to 16-904 or section 19-2402.

(2) No owner of any real property located within the area designated by a city pursuant to subsection (1) of this section or section 13-327 may subdivide, plat, or lay out such real property in building lots, streets, or other portions of the same intended to be dedicated for public use or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto without first having obtained the approval of the city council of such city or its agent designated pursuant to section 19-916 and, when applicable, having complied with sections 39-1311 to 39-1311.05. The fact that such real property is located in a different county or counties than some or all portions of the city shall not be

construed as affecting the necessity of obtaining the approval of the city council of such city or its designated agent.

(3) In counties that (a) have adopted a comprehensive development plan which meets the requirements of section 23-114.02 and (b) are enforcing subdivision regulations, the county planning commission shall be provided with all available materials on any proposed subdivision plat, contemplating public streets or improvements, which is filed with a municipality in that county, when such proposed plat lies partially or totally within the extraterritorial subdivision jurisdiction being exercised by that municipality in such county. The commission shall be given four weeks to officially comment on the appropriateness of the design and improvements proposed in the plat. The review period for the commission shall run concurrently with subdivision review activities of the municipality after the commission receives all available material for a proposed subdivision plat.

Source: Laws 1957, c. 28, § 2(1), p. 183; Laws 1967, c. 70, § 2, p. 232; Laws 1967, c. 75, § 2, p. 243; Laws 1978, LB 186, § 1; Laws 1983, LB 71, § 2; Laws 1993, LB 208, § 1; Laws 2001, LB 222, § 1; Laws 2002, LB 729, § 4; Laws 2003, LB 187, § 4.

Act, of which this section was a part, sustained as constitutional. Schlientz v. City of North Platte, 172 Neb. 477, 110 N.W.2d 58 (1961).

16-903 Platting; recording; city council; powers.

No plat or instruments effecting the subdivision of real property, described in section 16-902, shall be recorded or have any force and effect unless the same be approved by the city council of such city or by its agent designated pursuant to section 19-916. The city council of such city shall have power, by ordinance, to provide the manner, plan, or method by which real property in any such area may be subdivided, platted, or laid out, including a plan or system for the avenues, streets, or alleys to be laid out within or across the same; and to prohibit the sale or offering for sale of, and the construction of buildings and other improvements on, any lots or parts of real property not subdivided, platted, or laid out as required in sections 16-902 to 16-904, 19-916, 19-918, and 19-920.

Source: Laws 1957, c. 28, § 2(2), p. 183; Laws 1967, c. 66, § 5, p. 217; Laws 1983, LB 71, § 3.

Act, of which this section was a part, sustained as constitutional. Schlientz v. City of North Platte, 172 Neb. 477, 110 N.W.2d 58 (1961).

16-904 Conformity with ordinance; dedication of avenues, streets, and alleys.

The city council, described in section 16-902, shall have power to compel the owner of any real property in such area in subdividing, platting, or laying out the same to conform to the requirements of the ordinance and to lay out and dedicate the avenues, streets, and alleys in accordance therewith.

Source: Laws 1957, c. 28, § 2(3), p. 184.

Act, of which this section was a part, sustained as constitutional. Schlientz v. City of North Platte, 172 Neb. 477, 110 N.W.2d 58 (1961).

16-905 Designation of jurisdiction; how described.

An ordinance of any city of the first class designating its jurisdiction over territory outside of the corporate limits of the city under section 16-901 or 16-902 shall describe such territory by metes and bounds or by reference to an official map.

Source: Laws 1993, LB 208, § 2.

ARTICLE 10

RETIREMENT SYSTEMS

(a) POLICE OFFICERS RETIREMENT

Section

(b) FIREFIGHTERS RETIREMENT

(a) POLICE OFFICERS RETIREMENT

16-1001 Applicability of sections.

Sections 16-1001 to 16-1019 shall apply to all police officers of a city of the first class.

Source: Laws 1983, LB 237, § 1.

16-1002 Terms, defined.

For purposes of sections 16-1001 to 16-1019, unless the context otherwise requires:

(1) Actuarial equivalent shall mean equality in value of the aggregate amount of benefit expected to be received under different forms of benefit or at different times determined as of a given date as adopted by the city or the retirement committee for use by the retirement system. Actuarial equivalencies shall be specified in the funding medium established for the retirement system, except that if benefits under the retirement system are obtained through the purchase of an annuity contract, the actuarial equivalent of any such form of benefit shall be the amount of pension benefit which can be purchased or otherwise provided by the police officer's retirement value. All actuarial and mortality assumptions adopted by the city or retirement committee shall be on a sex-neutral basis;

(2) Beneficiary shall mean the person or persons designated by a police officer, pursuant to a written instrument filed with the retirement committee before the police officer's death, to receive death benefits which may be payable under the retirement system;

(3) Funding agent shall mean any bank, trust company, life insurance company, thrift institution, credit union, or investment management firm selected by the city or retirement committee to hold or invest the funds of the retirement system;

(4) Regular interest shall mean the rate of interest earned each calendar year commencing January 1, 1984, equal to the rate of net earnings realized for the calendar year from investments of the retirement fund. Net earnings shall mean the amount by which income or gain realized from investments of the retirement fund exceeds the amount of any realized losses from such investments during the calendar year;

(5) Regular pay shall mean the average salary of a police officer for the five years preceding the date such police officer elects to retire, the five years

preceding his or her death, or the five years preceding the date of disability, whichever is earliest, except that for any police officer who retires, dies, or becomes disabled after July 15, 1992, regular pay shall mean the average salary of the police officer for the period of five consecutive years preceding such retirement, death, or disability which produces the highest average;

(6) Salary shall mean all amounts paid to a participating police officer by the employing city for personal services as reported on the participant's federal income tax withholding statement, including the police officer's contributions picked up by the city as provided in subsection (2) of section 16-1005 and any salary reduction contributions which are excludable from income for federal income tax purposes pursuant to section 125 or 457 of the Internal Revenue Code;

(7) Retirement committee shall mean the retirement committee created pursuant to section 16-1014;

(8) Retirement system shall mean a retirement system established pursuant to sections 16-1001 to 16-1019;

(9) Retirement value shall mean the accumulated value of the police officer's employee account and employer account. The retirement value shall consist of the sum of the contributions made or transferred to such accounts by the police officer and by the city on the police officer's behalf and the regular interest credited to the accounts as of the date of computation, reduced by any realized losses which were not taken into account in determining regular interest in any year, and further adjusted each year to reflect the pro rata share for the accounts of the appreciation or depreciation of the fair market value of the assets of the retirement system as determined by the retirement committee. The retirement value shall be reduced by the amount of all distributions made to or on the behalf of the police officer from the retirement system. Such valuation shall be computed annually as of December 31. If separate investment accounts are established pursuant to subsection (3) of section 16-1004, a police officer's retirement value with respect to such accounts shall be equal to the value of his or her separate investment accounts as determined under such subsection;

(10) Annuity contract shall mean the contract or contracts issued by one or more life insurance companies and purchased by the retirement system in order to provide any of the benefits described in sections 16-1001 to 16-1019. Annuity conversion rates contained in any such contract shall be specified on a sex-neutral basis; and

(11) Straight life annuity shall mean an ordinary annuity payable for the life of the primary annuitant only and terminating at his or her death without refund or death benefit of any kind.

Source: Laws 1983, LB 237, § 2; Laws 1992, LB 672, § 7; Laws 1995, LB 574, § 17.

16-1003 Police officer; prior service; how treated.

A police officer shall be credited with all years of his or her service after the year 1965 for the purpose of determining vested retirement benefits under sections 16-1001 to 16-1019.

Source: Laws 1983, LB 237, § 3.

16-1004 Police Officers Retirement System Fund; administration; transfer of contributions; system funding; separate investment accounts.

(1) Commencing on January 1, 1984, each city of the first class shall keep and maintain a Police Officers Retirement System Fund for the purpose of investing payroll deductions and city contributions to the retirement system. The fund shall be maintained separate and apart from all city money and funds. The fund shall be administered under the direction of the city and the retirement committee exclusively for the purposes of the retirement system and for the benefit of participating police officers and their beneficiaries. The fund shall be established as a trust under the laws of this state for all purposes of section 401(a) of the Internal Revenue Code. Upon the passage of sections 16-1001 to 16-1019 all of the contributions made by a police officer prior to January 1, 1984, will be transferred to the police officer's employee account without interest unless the city, at the time of the transfer, credited interest on such contributions. Regular interest shall begin to accrue on the contributions transferred into the fund from January 1, 1984. Such funds shall be invested in the manner prescribed in section 16-1016.

(2) The city shall establish a medium for funding of the retirement system, which may be a pension trust fund, custodial account, group annuity contract, or combination thereof, for the purpose of investing money for the retirement system in the manner prescribed by section 16-1016 and to provide the retirement, death, and disability benefits for police officers pursuant to sections 16-1001 to 16-1019. The trustee or custodian of any trust fund may be a designated funding agent which is qualified to act as a fiduciary or custodian in this state, the city treasurer, a city officer authorized to administer funds of the city, or a combination thereof.

(3) Upon direction of the city, there may be established separate investment accounts for each participating police officer for the purpose of allowing each police officer to direct the investment of all or a portion of his or her employee account or employer account subject to the requirements of section 16-1016 and any other rules or limitations that may be established by the city or the retirement committee. If separate investment accounts are established, each account shall be separately invested and reinvested, separately credited with all earnings and gains with respect to the investment of the assets of the investment account, and separately debited with the losses of the account. Each investment account shall be adjusted each year to reflect the appreciation or depreciation of the fair market value of the assets held in such account as determined by the retirement committee. The expenses incurred by the retirement system when a police officer directs the investment of all or a portion of his or her individual investment account shall be charged against the police officer's investment account and shall reduce the police officer's retirement value.

Source: Laws 1983, LB 237, § 4; Laws 1992, LB 672, § 8; Laws 1995, LB 574, § 18.

16-1005 Contribution by police officer; amount; city; pick up officers' contributions; voluntary contributions.

(1) Each police officer participating in the retirement system shall contribute to the retirement system a sum equal to six percent of his or her salary. Such payment shall be made by regular payroll deductions from his or her periodic

salary and shall be credited to his or her employee account on a monthly basis. Each such account shall also be credited with regular interest.

(2) Each city of the first class with police officers participating in a retirement system established pursuant to sections 16-1001 to 16-1019 shall pick up the police officers' contributions required by subsection (1) of this section for all compensation paid on or after January 1, 1984, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the city shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the Internal Revenue Code, these contributions shall not be included as gross income of the employee until such time as they are distributed from the retirement system. The city shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee. The city shall pick up these contributions by a salary deduction either through a reduction in the cash salary of the employee or a combination of a reduction in salary and offset against a future salary increase. A police officer shall not be given an option to choose to receive the amount of the required contribution in lieu of having such contribution paid directly to the retirement system.

(3) Each police officer participating in the retirement system shall be entitled to make voluntary cash contributions to the retirement system in an amount not to exceed the contribution limitations established by the Internal Revenue Code. Voluntary contributions shall be credited to the police officer's employee account and shall thereafter be credited with regular interest. A police officer's voluntary contribution shall become a part of the Police Officers Retirement System Fund and shall be held, administered, invested, and distributed in the same manner as any other employee contribution to the retirement system.

Source: Laws 1983, LB 237, § 5; Laws 1992, LB 672, § 9; Laws 1995, LB 574, § 19.

16-1006 Contributions by city; amount; how credited; interest; when.

Beginning January 1, 1984, each city of the first class with police officers participating in a retirement system shall contribute to the retirement system a sum equal to six percent of each such participating police officer's periodic salary. Such payment shall be contributed as provided in subsection (1) of section 16-1005 for employee contributions and shall be credited to his or her employer account on a monthly basis. Each such account shall also be credited with regular interest. The city shall also contribute to the employer account of any police officer employed by the city on January 1, 1984, an amount equal to the employee contributions of such police officer that were made to the city prior to January 1, 1984, without interest, with such contribution to be made at the time the police officer retires or terminates employment with the city. The city may contribute such amount before the police officer's retirement or termination of employment or credit interest on such contribution.

Source: Laws 1983, LB 237, § 6; Laws 1992, LB 672, § 10.

16-1007 Retiring officer; annuity options; how determined; lump-sum payment option.

(1) At any time before the retirement date, the retiring police officer may elect to receive at his or her retirement date a pension benefit either in the form

of a straight life annuity or any optional form of annuity benefit established by the retirement committee and provided under a purchased annuity contract. The optional annuity benefit shall be specified in the funding medium for the retirement system and shall include a straight life annuity with a guarantee of at least sixty monthly payments or an annuity payable for the life of the retiring police officer and, after the death of the retiree, monthly payments, as elected by the retiring police officer, of either one hundred percent, seventy-five percent, or fifty percent of the amount of annuity payable to the retiring police officer during his or her life, to the beneficiary selected by the retiring police officer at the time of the original application for an annuity. For any police officer whose retirement date is on or after January 1, 1997, the optional benefit forms for the retirement system shall include a single lump-sum payment of the police officer's retirement value. For police officers whose retirement date is prior to January 1, 1997, a single lump-sum payment shall be available only if the city has adopted such distribution option in the funding medium established for the retirement system. The retiring police officer may further elect to defer the date of the first annuity payment or lump-sum payment to the first day of any specified month prior to age seventy. If the retiring police officer elects to receive his or her pension benefit in the form of an annuity, the amount of annuity benefit shall be the amount paid by the annuity contract purchased or otherwise provided by his or her retirement value as of the date of the first payment. Any such annuity contract purchased by the retirement system may be distributed to the police officer and, upon such distribution, all obligations of the retirement system to pay retirement, death, or disability benefits to the police officer and his or her beneficiaries shall terminate, without exception.

(2) For all officers employed on January 1, 1984, and continuously employed by the city from such date through the date of their retirement, the amount of the pension benefit, when determined on the straight life annuity basis, shall not be less than the following amounts:

(a) If retirement occurs following age sixty and with twenty-five years of service with the city, or twenty-one years of service if hired prior to November 18, 1965, fifty percent of regular pay; or

(b) If retirement occurs following age fifty-five but before age sixty and with twenty-five years of service with the city, forty percent of regular pay.

A police officer entitled to a minimum pension benefit under this subsection may elect to receive such pension benefit in any form permitted by subsection (1) of this section, including a single lump-sum payment, if the officer retires on or after January 1, 1997, or if the city has adopted a lump-sum distribution option for officers retiring before January 1, 1997, in the funding medium for the retirement system. If the minimum pension benefit is paid in a form other than a straight life annuity, such benefit shall be the actuarial equivalent of the straight life annuity that would otherwise be paid to the officer pursuant to this subsection.

If the police officer chooses the single lump-sum payment option, the officer can request that the actuarial equivalent be equal to the average of the cost of three annuity contracts purchased on the open market. Of the three annuity contracts used for comparison, one shall be chosen by the police officer, one shall be chosen by the retirement committee, and one shall be chosen by the city.

(3) If the retirement value of an officer entitled to a minimum pension benefit under subsection (2) of this section is not sufficient at the time of the first payment to purchase or provide the required pension benefit, the city shall transfer such funds as may be necessary to the employer account of the police officer so that the retirement value of such officer is sufficient to purchase or provide for the required pension benefit.

(4) Any retiring police officer whose pension benefit is less than twenty-five dollars per month on the straight life annuity option shall be paid a lump-sum settlement equal to the retirement value and shall not be entitled to elect to receive annuity benefits.

Source: Laws 1983, LB 237, § 7; Laws 1992, LB 672, § 11.

16-1008 Retirement options; retirement date.

(1) A police officer of a city of the first class may:

(a) Elect to retire and receive the applicable pension benefit provided in section 16-1007 based on his or her full retirement value upon the attainment of age sixty;

(b) Elect to take early retirement and receive the applicable pension benefit provided in section 16-1007 if he or she has attained the age of fifty-five and has completed twenty-five years of service with the city; or

(c) Retire as a result of disability while in the line of duty, as determined under section 16-1011, at any age, and receive the applicable pension benefit provided in section 16-1011.

(2) A police officer who is eligible to retire pursuant to subsection (1) of this section but does not, shall continue to contribute to his or her employee account, and the city shall continue to contribute to his or her employee account and to his or her employer account.

(3) The first of the month immediately following the last day of work shall be the retirement date.

Source: Laws 1983, LB 237, § 8; Laws 1992, LB 672, § 12.

16-1009 Police officer; death other than in the line of duty; pension benefit payable.

(1) When prior to retirement any police officer participating in the retirement system dies other than in the line of duty and except as provided in subsection (2) of this section, the entire retirement value shall be payable to the beneficiary or beneficiaries specified by the deceased police officer prior to his or her death or to the deceased police officer's estate if no beneficiary was specified. The retirement value or portion thereof to be received by the beneficiary may be paid in the form of a single lump-sum payment, straight life annuity, or other optional form of benefit specified in the retirement system's funding medium. If benefits are paid in the form of an annuity, the annuity shall be the amount paid by the annuity contract purchased or otherwise provided by the amount of the beneficiary's share of the retirement value as of the date of the first payment. Upon the purchase and distribution of such annuity contract to the beneficiary, all obligations of the retirement system to the beneficiary shall terminate, without exception.

(2) If any police officer employed by such city as a member of its paid police department on January 1, 1984, except those who shall have been formerly

employed in such department who are now in military service, dies while employed by the city as a police officer, other than in the line of duty, after becoming fifty-five years of age and before electing to retire, and after serving in the paid police department of such city for at least twenty-one years, then a pension of at least twenty-five percent of his or her regular pay in the form of a straight life annuity shall be paid to the surviving spouse of such deceased police officer. If the deceased police officer is not survived by a spouse or if the surviving spouse dies before the children of the police officer attain the age of majority, the pension benefit shall be paid to the police officer's minor children until they attain the age of majority. Each such child shall share equally in the total pension benefit to the age of his or her majority, except that as soon as a child attains the age of majority, such pension as to such child shall cease. To the extent that the retirement value at the date of death exceeds the amount required to purchase the specified pension, the excess shall be paid in the manner provided in subsection (1) of this section. If the actuarial equivalent of the pension benefit payable under this subsection exceeds the retirement value at the time of the first payment, the city shall contribute such additional amounts as may be necessary to purchase or provide for the required pension benefit. If a deceased police officer described in this subsection is not survived by a spouse or minor children, his or her death benefits shall be provided under subsection (1) of this section as if such officer was not employed by the city on January 1, 1984.

(3) Any payments for the benefit of a minor child shall be made on behalf of the child to the surviving parent or, if there is no surviving parent, to the legal guardian of the child.

Source: Laws 1983, LB 237, § 9; Laws 1992, LB 672, § 13.

16-1010 Police officer; death in the line of duty; beneficiaries; retirement benefits.

When prior to retirement any police officer participating in the retirement system dies in the line of duty or in case death is caused by or is the result of injuries received while in the line of duty and if such police officer is not survived by a spouse or by minor children, the entire retirement value shall be payable to the beneficiary specified by the deceased police officer prior to his or her death or to the deceased police officer's estate if no beneficiary was specified. The retirement value or portion thereof to be received by the beneficiary may be paid in the form of a single lump-sum payment, straight life annuity, or other optional form of benefit specified in the retirement system's funding medium. For a police officer who is survived by a spouse or minor children, a retirement pension of fifty percent of regular pay shall be paid to the surviving spouse or, upon his or her remarriage or death, to the minor children during each child's minority subject to deduction of the amounts paid as workers' compensation benefits on account of death as provided in section 16-1012. Each such child shall share equally in the total pension benefit to the age of his or her majority, except that as soon as a child attains the age of majority, such pension as to such child shall cease. Any payments for the benefit of a minor child shall be made on behalf of such child to the surviving parent or, if there is no surviving parent, to the legal guardian of the child. To the extent that the retirement value at the date of death exceeds the amount required to purchase or provide the specified retirement pension, as reduced by any amounts paid as workers' compensation benefits, the excess shall be paid

in the manner provided in subsection (1) of section 16-1009. If the actuarial equivalent of the pension benefit payable to a surviving spouse or minor children under this section exceeds the retirement value at the time of the first payment, the city shall contribute such additional amount as may be necessary to purchase or provide for the required pension benefit.

Source: Laws 1983, LB 237, § 10; Laws 1986, LB 811, § 3; Laws 1992, LB 672, § 14.

16-1011 Police officer; disability in the line of duty; benefit; requirements.

(1) If any police officer becomes disabled, such police officer shall be placed upon the roll of pensioned police officers at the regular retirement pension of fifty percent of regular pay for the period of such disability. For purposes of this section, disability shall mean the complete inability of the police officer, for reasons of accident or other cause while in the line of duty, to perform the duties of a police officer.

(2) No disability benefit payment shall be made except upon adequate proof furnished to the city, such proof to consist of a medical examination conducted by a competent, disinterested physician who is duly licensed to practice medicine and surgery in this state and who certifies to the city that the police officer is unable to perform the duties of a police officer. The city, during the first three years of the payment of such benefits, shall have the right, at reasonable times, to require the disabled police officer to undergo a medical examination at the city's expense to determine the continuance of the disability claimed. After such three-year period, the city may request the district court to order the police officer to submit proof of the continuance of the disability claimed if the city has reasonable grounds to believe the police officer is fraudulently receiving disability payments. The city shall have the right to demand a physical examination of the police officer by a competent, disinterested physician who is duly licensed to practice medicine and surgery in this state, and who is chosen by the city. The expense of such examination shall be borne by the city.

(3) In case of temporary disability of a police officer received while in the line of duty, he or she shall receive his or her salary during the continuance of such disability for a period not to exceed twelve months, except that if it is ascertained by the city council or other proper municipal authorities within twelve months that such temporary disability has become a disability as defined in this section, then the salary shall cease and he or she shall be entitled to the benefits for pensions in case of disability as provided in this section.

(4) All payments of pension or salary provided by this section shall be subject to deduction of amounts paid under the Nebraska Workers' Compensation Act. Such payments shall not commence until all credit for unused annual or sick leave and other similar credits have been fully utilized by the disabled police officer if there will be no impairment to his or her salary during the period of disability. Total payments to a disabled police officer, in excess of amounts paid as workers' compensation benefits, shall not be less than the retirement value at the date of disability. If the actuarial equivalent of the disability pension payable under this section exceeds the police officer's retirement value at the time of the first payment, the city shall contribute such additional amounts as may be necessary, from time to time, to provide for the required disability pension.

(5) If a police officer who was pensioned under this section is later determined to be no longer disabled, the pension provided for under this section shall terminate and the police officer's vested retirement value, as reduced by any disability payments made from the retirement system, shall thereafter be held and administered in the same manner as for any nondisabled police officer or former police officer.

(6) If a police officer who has pensioned under this section is later determined to be no longer disabled during the first three years when disability benefit payments are being paid the police officer may return to duty with the police force under the following conditions:

(a) If a vacancy exists on the police force for which the police officer is qualified and the police officer wishes to return to the police force, the city shall hire the police officer to fill the vacancy at a pay grade of not less than his or her previous pay grade; or

(b) If no vacancy exists on the police force and the police officer wishes to return to the police force, the city may create a vacancy under the city's reduction in force policy adopted under the Civil Service Act and rehire the officer at a pay grade of not less than his or her previous pay grade.

The provisions of this subsection shall not apply to a police officer whose disability benefit payments are terminated because of fraud on the part of the police officer.

Source: Laws 1983, LB 237, § 11; Laws 1986, LB 811, § 4; Laws 1992, LB 672, § 15.

Cross References

Civil Service Act, see section 19-1825.
Nebraska Workers' Compensation Act, see section 48-1,110.

16-1012 Police officer; temporary disability; workers' compensation benefits; how treated.

No police officer shall be entitled during any period of temporary disability to receive in full both his or her salary and his or her benefits under the Nebraska Workers' Compensation Act. All Nebraska workers' compensation benefits shall be payable in full to such police officer as provided in the Nebraska Workers' Compensation Act, but all amounts paid by the city or its insurer under the Nebraska Workers' Compensation Act to any disabled police officer entitled to receive a salary during such disability shall be considered as payments on account of such salary and shall be credited thereon. The remaining balance of such salary, if any, shall be payable as otherwise provided in sections 16-1001 to 16-1019.

Source: Laws 1983, LB 237, § 12; Laws 1985, LB 3, § 1; Laws 1986, LB 811, § 5.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

16-1013 Police officer; termination of employment; benefits; how treated; vesting schedule.

If a police officer quits or is discharged before his or her normal or early retirement date, the officer may request and receive as a lump-sum payment an amount equal to the retirement value of his or her employee account as

determined at the valuation date preceding his or her termination of employment. Such police officer, if vested, shall also receive a deferred pension benefit in an amount purchased or provided by the retirement value at the date of retirement. The retirement value at such retirement date shall consist of the accumulated value of the police officer's employee account, as reduced by any lump-sum distributions received prior to retirement, together with a vested percentage of the accumulated value of the police officer's employer account at the date of retirement.

The vesting schedule shall be as follows:

(1) If the terminated police officer has been a member of the system for less than four years, such vesting shall be nil;

(2) If the terminating officer has been a member of the paid department of the city of the first class for at least four years, such vesting percentage shall be forty percent. Such vesting percentage shall be fifty percent after five years, sixty percent after six years, seventy percent after seven years, eighty percent after eight years, ninety percent after nine years, and one hundred percent after ten years; and

(3) All police officers shall be one hundred percent vested upon attainment of age sixty while employed by the city as a police officer.

The deferred pension benefit shall be payable on the first of the month immediately following the police officer's sixtieth birthday. At the option of the terminating police officer, such pension benefit may be paid as of the first of the month after such police officer attains the age of fifty-five. Such election may be made by the police officer any time prior to the payment of the pension benefits. The deferred pension benefit shall be paid in the form of the benefit options specified in subsection (1) of section 16-1007 as elected by the police officer. If the police officer's vested retirement value at the date of his or her termination of employment is less than three thousand five hundred dollars, the city may elect to pay such police officer his or her vested retirement value in the form of a single lump-sum payment.

Effective January 1, 1997, a police officer may elect upon his or her termination of employment to receive his or her vested retirement value in the form of a single lump-sum payment. For a police officer whose termination of employment is prior to January 1, 1997, this election shall be available only if the city has adopted a lump-sum distribution option for terminating police officers in the funding medium established for the retirement system.

Upon any lump-sum payment of a terminating police officer's retirement value under this section, such police officer will not be entitled to any deferred pension benefit and the city and the retirement system shall have no further obligation to pay such police officer or his or her beneficiaries any benefits under sections 16-1001 to 16-1019.

If the terminating police officer is not credited with one hundred percent of his or her employer account, the nonvested portion of the account shall be forfeited and first used to meet the expense charges incurred by the city in connection with administering the police officers retirement system and the remainder shall then be used to reduce the city contribution which would otherwise be required to fund pension benefits.

Source: Laws 1983, LB 237, § 13; Laws 1992, LB 672, § 16.

16-1014 Retirement committee; established; governing body; responsibilities.

A retirement committee shall be established to supervise the general operation of the retirement system established pursuant to sections 16-1001 to 16-1019. The governing body of the city shall continue to be responsible for the general administration of such retirement system unless specific functions or all functions with regard to the administration of the retirement system are delegated, by ordinance, to the retirement committee. Whenever duties or powers are vested in the city or the retirement committee under such sections or whenever such sections fail to specifically allocate the duties or powers of administration of the retirement system, such powers or duties shall be vested in the city unless such powers or duties have been delegated by ordinance to the retirement committee. The city and the retirement committee shall have all powers which are necessary for or appropriate to establishing, maintaining, managing, and administering the retirement system.

Source: Laws 1983, LB 237, § 14; Laws 1992, LB 672, § 17.

16-1015 Retirement committee; members; terms; vacancy.

Each retirement committee established pursuant to section 16-1014 shall consist of members from both the police force and designees of the city council. The committee shall consist of six members of which four members shall be selected by the officers from the police force of the city. Two members shall be designated by the city council. The members who are not participants in such retirement system shall have a general knowledge of retirement plans. Members of the governing body of such city may serve on the retirement committee. The committee members shall be appointed to four-year terms. Vacancies shall be filled for the remainder of the term by a person with the same representation as his or her predecessor. Members of the retirement committee shall receive no salary and shall not be compensated for expenses.

Source: Laws 1983, LB 237, § 15.

16-1016 Retirement system funds; contracts for investments.

The funds of the retirement system shall be invested under the general direction of the retirement committee. The city or the retirement committee if delegated such function by the city shall select and contract with a funding agent or agents to hold or invest the assets of the retirement system and to provide for the benefits provided by sections 16-1001 to 16-1019. The city or committee may select and contract with investment managers registered under the Investment Advisers Act of 1940 to invest, reinvest, and otherwise manage such portion of the assets of the retirement system as may be assigned by the city or committee. All funds of the retirement system shall be invested pursuant to the policies established by the Nebraska Investment Council.

Source: Laws 1983, LB 237, § 16; Laws 1991, LB 2, § 2; Laws 1992, LB 672, § 18.

16-1017 Retirement committee; duties.

(1) It shall be the duty of the retirement committee to:

(a) Provide each employee a summary of plan eligibility requirements and benefit provisions;

(b) Provide, within thirty days after a request is made by a participant, a statement describing the amount of benefits such participant is eligible to receive; and

(c) Make available for review an annual report of the system's operations describing both (i) the amount of contributions to the system from both employee and employer sources and (ii) an identification of the total assets of the retirement system.

(2)(a) Beginning December 31, 1998, and each December 31 thereafter, the chairperson of the retirement committee shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to section 401(a) of the Internal Revenue Code and administered by a retirement system established pursuant to sections 16-1001 to 16-1019 and shall submit copies of such report to the members of the Nebraska Retirement Systems Committee of the Legislature. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

(i) The number of persons participating in the retirement plan;

(ii) The contribution rates of participants in the plan;

(iii) Plan assets and liabilities;

(iv) The names and positions of persons administering the plan;

(v) The names and positions of persons investing plan assets;

(vi) The form and nature of investments;

(vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the retirement committee shall cause to be prepared a quadrennial report and the chairperson shall file the same with the Public Employees Retirement Board and submit to the members of the Nebraska Retirement Systems Committee of the Legislature a copy of such report. The report shall consist of a full actuarial analysis of each such retirement plan administered by a system established pursuant to sections 16-1001 to 16-1019. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

Source: Laws 1983, LB 237, § 17; Laws 1998, LB 1191, § 18; Laws 1999, LB 795, § 7.

16-1018 Termination of employment; transfer of benefits; when.

If a police officer terminates his or her employment for the purpose of becoming a police officer employed by another city of the first class in Nebraska and such new employment commences within one hundred twenty days of such termination, such police officer shall be entitled to transfer to the Police Officers Retirement System Fund of the city by which he or she is newly employed, the full amount of his or her employee account and the vested portion of the value of his or her employer account at the time of termination. The transferred funds shall be directly transferred to the police officer's employee account in the retirement system of the city to which transferred and administered by the retirement committee of the city to which transferred. Upon such transfer, the city and the retirement system shall have no further obligation to such police officer or his or her beneficiary. Following the commencement of new employment, the transferring police officer shall be deemed a new employee for all purposes of the retirement system of the city to which he or she transferred.

Source: Laws 1983, LB 237, § 18; Laws 1992, LB 672, § 19.

16-1019 Exemption from legal process; administration; requirements; retirement committee; powers and duties; review of adjustment; tax levy authorized.

(1) The right to any benefits under the retirement system and the assets of any fund of the retirement system shall not be assignable or subject to execution, garnishment, attachment, or the operation of any bankruptcy or insolvency laws, except that the retirement system may comply with the directions set forth in a qualified domestic relations order meeting the requirements of section 414(p) of the Internal Revenue Code. The city or retirement committee may require appropriate releases from any person as a condition to complying with any such order. The retirement system shall not recognize any domestic relations order which alters or changes benefits, provides for a form of benefit not otherwise provided for by the retirement system, increases benefits not otherwise provided by the retirement system, or accelerates or defers the time of payment of benefits. No participant or beneficiary shall have any right to any specific portion of the assets of the retirement system.

(2) The retirement system shall be administered in a manner necessary to comply with the tax-qualification requirements applicable to government retirement plans under section 401(a) of the Internal Revenue Code, including section 401(a)(9) relating to the time and manner in which benefits are required to be distributed, section 401(a)(16) relating to compliance with the maximum limitation on the plan benefits or contributions under section 415, section 401(a)(17) which limits the amount of compensation which can be taken into account under a retirement plan, and section 401(a)(25) relating to the specification of actuarial assumptions. Any requirements for compliance with section 401(a) of the Internal Revenue Code may be set forth in any trust or funding medium for the retirement system. This subsection shall be in full force and effect only so long as conformity with section 401(a) of the Internal Revenue Code is required for public retirement systems in order to secure the favorable income tax treatment extended to sponsors and beneficiaries of tax-qualified retirement plans.

(3) If the retirement committee determines that the retirement system has previously overpaid or underpaid a benefit payable under sections 16-1001 to

16-1019, it shall have the power to correct such error. In the event of an overpayment, the retirement system may, in addition to any other remedy that the retirement system may possess, offset future benefit payments by the amount of the prior overpayment, together with regular interest thereon.

(4) A police officer whose benefit payment is adjusted by the retirement committee pursuant to subsection (3) of this section may request a review by the city council of the adjustment made by the retirement committee.

(5) In order to provide the necessary amounts to pay for or fund a pension plan established under sections 16-1001 to 16-1019, the mayor and council may make a levy which is within the levy restrictions of section 77-3442.

Source: Laws 1983, LB 237, § 19; Laws 1992, LB 672, § 20; Laws 1995, LB 574, § 20; Laws 1996, LB 1114, § 29.

(b) FIREFIGHTERS RETIREMENT

16-1020 Applicability of sections.

Except as provided in section 16-1039, sections 16-1020 to 16-1038 shall apply to all firefighters of a city of the first class.

Source: Laws 1983, LB 531, § 1.

16-1021 Terms, defined.

For the purposes of sections 16-1020 to 16-1042, unless the context otherwise requires:

(1) Actuarial equivalent shall mean equality in value of the aggregate amount of benefit expected to be received under different forms or at different times determined as of a given date as adopted by the city or the retirement committee for use by the retirement system. Such actuarial equivalencies shall be specified in the funding medium established for the retirement system, except that if benefits under the retirement system are obtained through the purchase of an annuity contract, the actuarial equivalency of any such form of benefit shall be the amount of pension benefit which can be purchased or otherwise provided by such contract. All actuarial and mortality assumptions adopted by the city or retirement committee shall be on a sex-neutral basis;

(2) Annuity contract shall mean the contract or contracts issued by one or more life insurance companies or designated trusts and purchased by the retirement system in order to provide any of the benefits described in such sections. Annuity conversion rates contained in any such contract shall be specified on a sex-neutral basis;

(3) Beneficiary shall mean the person or persons designated by a firefighter, pursuant to a written instrument filed with the retirement committee before the firefighter's death, to receive death benefits which may be payable under the retirement system;

(4) Funding agent shall mean any bank, trust company, life insurance company, thrift institution, credit union, or investment management firm selected by the retirement committee, subject to the approval of the city, to hold or invest the funds of the retirement system;

(5) Regular interest shall mean the rate of interest earned each calendar year commencing January 1, 1984, equal to the rate of net earnings realized for the calendar year from investments of the retirement fund. Net earnings shall mean

the amount by which income or gain realized from investments of the retirement fund exceeds the amount of any realized losses from such investments during the calendar year. The retirement committee shall annually report the amount of regular interest earned for such year;

(6) Regular pay shall mean the salary of a firefighter at the date such firefighter elects to retire or terminate employment with the city;

(7) Retirement committee shall mean the retirement committee created pursuant to section 16-1034;

(8) Retirement system shall mean a retirement system established pursuant to sections 16-1020 to 16-1042;

(9) Retirement value shall mean the accumulated value of the firefighter's employee account and employer account. The retirement value at any time shall consist of the sum of the contributions made or transferred to such accounts by the firefighter and by the city on the firefighter's behalf and the regular interest credited to the accounts through such date, reduced by any realized losses which were not taken into account in determining regular interest in any year, and as further adjusted each year to reflect the accounts' pro rata share of the appreciation or depreciation of the assets of the retirement system as determined by the retirement committee at their fair market values, including any account under subsection (2) of section 16-1036. Such valuation shall be undertaken at least annually as of December 31 of each year and at such other times as may be directed by the retirement committee. The value of each account shall be reduced each year by the appropriate share of the investment costs as provided in section 16-1036.01. The retirement value shall be further reduced by the amount of all distributions made to or on the behalf of the firefighter from the retirement system;

(10) Salary shall mean the base rate of pay, excluding overtime, callback pay, clothing allowances, and other such benefits as reported on the participant's federal income tax withholding statement including the firefighters' contributions picked up by the city as provided in subsection (2) of section 16-1024 and any salary reduction contributions which are excludable from income for federal income tax purposes pursuant to section 125 or 457 of the Internal Revenue Code; and

(11) Straight life annuity shall mean an ordinary annuity payable for the life of the primary annuitant only, and terminating at his or her death without refund or death benefit of any kind.

Source: Laws 1983, LB 531, § 2; Laws 1993, LB 724, § 1; Laws 1995, LB 574, § 21.

16-1022 Firefighter; prior service; how treated.

A firefighter shall be credited with all years of his or her service after August 7, 1965, for the purpose of determining vested retirement benefits under sections 16-1020 to 16-1038.

Source: Laws 1983, LB 531, § 3.

16-1023 Firefighters Retirement System Fund; city maintain; transfer of contributions; funding of system.

(1) Commencing on January 1, 1984, each city of the first class having a paid fire department shall keep and maintain a Firefighters Retirement System Fund

for the purpose of investing payroll deductions and city contributions to the retirement system. The fund shall be maintained separate and apart from all city money and funds. The fund shall be administered exclusively for the purposes of the retirement system and for the benefit of participating firefighters and their beneficiaries and so as to establish the fund as a trust under the law of this state for all purposes of section 401(a) of the Internal Revenue Code. Upon the passage of sections 16-1020 to 16-1038 all of the contributions made by a firefighter under section 35-203.01 as it formerly existed and interest accrued at five percent per annum on such contributions prior to January 1, 1984, shall be transferred to the firefighter's employee account. Regular interest shall begin to accrue on the contributions transferred into the fund. Such funds shall be invested in the manner prescribed in section 16-1036.

(2) The city shall establish a medium for funding the retirement system which, with the approval of the retirement committee, may be a pension trust fund, custodial account, group annuity contract, or combination thereof, for the purpose of investing money for the retirement system in the manner prescribed by section 16-1036 and to provide the retirement, death, and disability benefits for firefighters granted by sections 16-1020 to 16-1042. The trustee or custodian of any trust fund shall be a designated funding agent which is qualified to act as a fiduciary or custodian in this state, the city treasurer, an appropriate city officer authorized to administer funds of the city, or a combination thereof.

Source: Laws 1983, LB 531, § 4; Laws 1993, LB 724, § 2; Laws 1995, LB 574, § 22.

16-1024 Contribution by firefighter; amount; interest; city; pick up firefighters' contributions; voluntary contribution.

(1) Each firefighter participating in the retirement system shall contribute to the retirement system a sum equal to six and one-half percent of his or her salary. Such payment shall be made by regular payroll deductions from his or her periodic salary and shall be credited to his or her employee account on a monthly basis. Each such account shall also be credited with regular interest.

(2) Each city of the first class with firefighters participating in a retirement system shall pick up the firefighters' contributions required by subsection (1) of this section for all compensation paid on or after January 1, 1984, and the contributions so picked up shall be treated as employer contributions in determining federal income tax treatment under the Internal Revenue Code, except that the city shall continue to withhold federal income taxes based upon such contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the Internal Revenue Code, such contributions shall not be included as gross income of the employee until such time as they are distributed from the retirement system. The city shall pay the employee contributions from the same source of funds which is used in paying compensation to the employee. The city shall pick up the employee contributions by a salary deduction either through a reduction in the cash salary of the employee or a combination of a reduction in salary and offset against a future salary increase. In no event shall a firefighter be given an option to choose to receive the amount of the required contribution in lieu of having such contribution paid directly to the retirement system.

(3) Each firefighter participating in the retirement system shall be entitled to make voluntary cash contributions to the retirement system in an amount not to

exceed the contribution limitations established by the Internal Revenue Code. Voluntary contributions shall be credited to the employee account and shall thereafter be credited with regular interest. A voluntary contribution shall become a part of the Firefighters Retirement System Fund and shall be held, administered, invested, and distributed in the same manner as any other employee contribution to the retirement system.

Source: Laws 1983, LB 531, § 5; Laws 1993, LB 724, § 3; Laws 1995, LB 574, § 23.

16-1025 Contributions by city; amount; how credited; interest.

(1) Beginning January 1, 1984, each city of the first class with firefighters participating in a retirement system shall contribute to the retirement system a sum equal to thirteen percent of each such participating firefighter's periodic salary. Such payment shall be credited to his or her employer account on a monthly basis. Each such account shall also be credited with regular interest. The city shall also contribute to the employer account of any firefighter employed by the city on January 1, 1984, an amount equal to the employee's contributions, without interest, that were made to the city prior to January 1, 1984, with such contribution to be made at the time the firefighter retires or terminates employment with the city. The city may contribute such amount before the firefighter's retirement or termination of employment or credit interest on such contribution.

(2) Each such city shall contribute any additional amounts necessary to fund retirement or other retirement plan benefits not provided by employee contributions or city contributions to the employer account required by subsection (1) of this section. Such additional contributions shall be accumulated in an unallocated employer account of the Firefighters Retirement System Fund and used to provide the benefits, if any, specified in sections 16-1027 and 16-1029 to 16-1031 which are not otherwise funded by the firefighter's retirement value. Funds needed to provide for a firefighter's benefits shall be transferred from the unallocated employer account when and as such funds are needed. All funds committed by the city to the funding of a firefighter pension system on January 1, 1984, that are not transferred to the firefighters employee accounts shall be transferred to the unallocated employer account.

Source: Laws 1983, LB 531, § 6; Laws 1993, LB 724, § 4.

16-1026 Repealed. Laws 1998, LB 1191, § 85.

16-1027 Retiring firefighter; annuity options; how determined; lump-sum payment.

(1) At any time before the retirement date, the retiring firefighter may elect to receive his or her pension benefit at retirement either in the form of a straight life annuity or any optional form of annuity benefit established by the retirement committee and provided under a purchased annuity contract. Such optional annuity benefit shall be specified in the funding medium for the retirement system and shall include a straight life annuity with a guarantee of at least sixty monthly payments or an annuity payable for the life of the retiring firefighter and, after the death of the retiree, monthly payments, as elected by the retiring firefighter, of one hundred percent, seventy-five percent, or fifty percent of the amount of annuity payable to the retiring firefighter during his or

her life, to the beneficiary selected by the retiring firefighter at the time of the original application for an annuity. For any firefighter whose retirement date is on or after January 1, 1997, the optional benefit forms for the retirement system shall include a single lump-sum payment of the firefighter's retirement value. For firefighters whose retirement date is prior to January 1, 1997, a single lump-sum payment shall be available only if the city has adopted such distribution option in the funding medium established for the retirement system. The retiring firefighter may further elect to defer the date of the first payment or lump-sum distribution to the first day of any specified month prior to age seventy. In the event the retiring firefighter elects to receive his or her pension benefit in the form of an annuity, the amount of such annuity benefit shall be the amount provided by the annuity contract purchased or otherwise provided by the firefighter's retirement value as of the date of the first payment. Any such annuity contract purchased by the retirement system may be distributed to the retiring firefighter. Upon the payment of a lump sum or the distribution of a paid-up annuity contract, all obligations of the retirement system to pay retirement benefits to the firefighter and his or her beneficiaries shall terminate, without exception.

(2) For all firefighters employed on January 1, 1984, the amount of the pension benefit at the retirement date shall not be less than the following amounts:

(a) If retirement from the city occurs following age fifty-five with twenty-one years of service with the city, fifty percent of regular pay;

(b) If retirement from the city occurs following age fifty but before age fifty-five with at least twenty-one years of service with the city, such firefighter shall receive the actuarial equivalent of the benefit which would otherwise be provided at age fifty-five;

(c) If retirement from the city occurs on or after age fifty-five with less than twenty-one years of service with the city, such firefighter shall receive a pension of at least fifty percent of the salary he or she was receiving at the time of retirement multiplied by the ratio of the years of service to twenty-one;

(d) For terminations of employment from the city on or after September 9, 1993, if such termination of employment as a firefighter occurs before age fifty-five but after completion of twenty-one years of service with the city, such firefighter shall receive upon the attainment of age fifty-five a pension benefit of fifty percent of regular pay;

(e) Unless an optional annuity benefit is selected by the retired firefighter, at the death of any such retired firefighter the same rate of pension as is provided for in this section shall be paid to the surviving spouse of such deceased firefighter during such time as the surviving spouse remains unmarried and, in case there is no surviving spouse, then the minor children, if any, of such deceased firefighter shall equally share such pension benefit during their minority, except that as soon as a child of such deceased firefighter ceases to be a minor, such pension as to such child shall cease; or

(f) In the event a retired firefighter or his or her surviving beneficiaries die before the aggregate amount of pension payments received by the firefighter and his or her survivor beneficiaries, if any, equals the total amount in the firefighter's employee account, at the time of the first benefit payment the difference between the total amount in the employee's account and the aggregate amount of pension payments received by the retired firefighter and his or

her surviving beneficiaries, if any, shall be paid in a single sum to the firefighter's estate.

A firefighter entitled to a minimum pension benefit under this subsection may elect to receive such pension benefit in any form permitted by subsection (1) of this section, including a single lump-sum payment, if the firefighter retires on or after January 1, 1997, or if the city has adopted a lump-sum distribution option for firefighters retiring before January 1, 1997, in the funding medium for the retirement system. If the minimum pension benefit is paid in the form of an optional annuity benefit or a single lump-sum payment, such benefit or payment shall be the actuarial equivalent of the annuity that would otherwise be paid to the firefighter pursuant to this subsection.

If the firefighter chooses the single lump-sum payment option, the firefighter may request that the actuarial equivalent be equal to the average of the cost of two annuity contracts purchased on the open market, if the difference between the cost of the two annuity contracts does not exceed five percent. Of the two annuity contracts used for comparison, one shall be chosen by the firefighter and one shall be chosen by the city. If the difference between the two annuity contracts exceeds five percent, the retirement committee shall review the costs of the two annuity contracts and make a recommendation to the city council as to the amount of the lump-sum payment to be made to the firefighter. The city council shall, after a hearing, determine the amount of the single lump-sum payment due the firefighter.

(3) If the retirement value of a firefighter entitled to a minimum pension benefit under subsection (2) of this section is not sufficient at the time of the first payment to purchase or provide the required pension benefit, the city shall utilize such funds as may be necessary from the unallocated employer account of the retirement system to purchase or provide for the required pension benefit.

(4) Any retiring firefighter whose pension benefit is less than twenty-five dollars per month on the straight life annuity option shall be paid a lump-sum settlement equal to the retirement value in lieu of annuity and shall not be entitled to elect to receive annuity benefits.

Source: Laws 1983, LB 531, § 8; Laws 1992, LB 672, § 22; Laws 1993, LB 724, § 5; Laws 1994, LB 1068, § 1.

16-1028 Retirement options; retirement date.

(1) A firefighter of a city of the first class may:

(a) Retire or be retired and receive the applicable retirement pension benefit upon the attainment of age fifty-five while employed by the city as a firefighter;

(b) Elect to retire after he or she has attained the age of fifty and has completed at least twenty-one years of service with the city and receive the actuarial equivalent of the pension benefit he or she would otherwise receive upon the attainment of age fifty-five;

(c) After twenty-one years of service with the city, terminate employment with the city and, upon the attainment of age fifty-five, receive the applicable retirement pension benefit; or

(d) Retire or be retired as a result of disability while in the line of duty, as determined under section 16-1031, at any age and receive the applicable pension benefit provided in such section.

(2) A firefighter who is eligible to retire pursuant to subdivision (1)(a) of this section but does not shall continue to contribute to his or her employee account and the city shall continue to contribute to its employer account.

(3) For purposes of subdivisions (1)(a), (b), and (d) of this section, the first of the month immediately following the last day of work shall be the retirement date. For purposes of subdivision (1)(c) of this section, the first of the month immediately following the attainment of age fifty-five shall be the retirement date.

Source: Laws 1983, LB 531, § 9; Laws 1993, LB 724, § 6; Laws 1994, LB 1068, § 2.

16-1029 Firefighter; death other than in the line of duty; pension benefit payable.

(1) When prior to the commencement of retirement benefits any firefighter participating in the retirement system dies other than in the line of duty, and except as provided in subsection (2) of this section, the entire retirement value shall be payable to the beneficiary or beneficiaries specified by the deceased firefighter prior to his or her death or to the deceased firefighter's estate in the event that no beneficiary was specified. The retirement value or portion thereof may be received by the beneficiary in the form of a single lump-sum payment, a straight life annuity, or any other optional form of benefit specified in the retirement system's funding medium. In the event benefits are paid in the form of an annuity, such annuity shall be the amount provided by the annuity contract purchased or otherwise provided by the amount of retirement value to be paid to the beneficiary as of the date of the first payment. Upon the payment of a lump-sum distribution or the purchase and distribution of such annuity contract to the beneficiary, all obligations of the retirement system to the beneficiary shall terminate, without exception.

(2) If any firefighter employed by such city as a member of its paid fire department on January 1, 1984, and any firefighter reemployed thereafter who, while employed in such department entered military service and is still in military service, dies while employed by the city as a firefighter other than in the line of duty after becoming fifty years of age and before electing to retire, and after serving in the paid fire department of such city for at least twenty-one years, then a pension of at least twenty-five percent of his or her regular pay as defined in section 16-1021, in the form of a straight life annuity, shall be paid to the surviving spouse or minor children of such deceased firefighter. If the deceased firefighter is not survived by a spouse or in the event such surviving spouse dies before the minor children of such firefighter attain the age of majority, such pension benefit shall be paid to the firefighter's minor children until they have attained the age of majority. Each such child shall share equally in the total pension benefit to the age of majority, except that as soon as a child attains the age of majority, such pension benefit to such child shall cease and be reallocated among the remaining minor children until the last remaining child dies or reaches the age of majority.

In the event that the actuarial equivalent of the pension benefit payable under this subsection exceeds the retirement value at the time of the first payment, the city shall utilize such funds as may be necessary from the unallocated employer account of the retirement system to purchase or provide for the required pension benefit. In the event a deceased firefighter described in this subsection

is not survived by a spouse or minor children, his or her death benefits shall be provided under the provisions of subsection (1) of this section as if such firefighter were not employed by the city on January 1, 1984.

(3) In the event the surviving spouse or minor children of such deceased firefighter die before the aggregate amount of pension payments received by the firefighter and his or her survivor beneficiaries, if any, equals the total amount in the firefighter's employee account at the time of the first benefit payment, the difference between such total amount in the employee's account and the aggregate amount of pension payments received by the retired firefighter and his or her surviving beneficiaries, if any, shall be paid in a single sum to the firefighter's beneficiary, or in the absence of a surviving beneficiary, his or her estate.

(4) To the extent that the retirement value at the date of death exceeds the amount required to purchase or provide the specified pension under subsection (2) of this section, the excess shall be paid in the manner provided in subsection (1) of this section.

(5) Any payments for the benefit of a minor child shall be made on behalf of such child to the surviving spouse or, if there is none, to the legal guardian of the child.

Source: Laws 1983, LB 531, § 10; Laws 1992, LB 672, § 23; Laws 1993, LB 724, § 7.

16-1030 Firefighter; death in the line of duty; retirement benefits.

When prior to commencement of retirement benefits any firefighter participating in the retirement system dies in the line of duty or in case death is caused by or is the result of injuries received while in the line of duty and such firefighter is not survived by a spouse or minor children, the entire retirement value shall be payable to the beneficiary or beneficiaries specified by the deceased firefighter prior to his or her death or to the deceased firefighter's estate in the event that no beneficiary was specified. The retirement value or portion thereof may be paid in the form of a single lump-sum payment, a straight life annuity, or any other optional form of benefit specified in the retirement system's funding medium. For a firefighter who is survived by a spouse or minor children, a retirement pension of fifty percent of regular pay shall be paid to the surviving spouse or, upon his or her remarriage or death, to the minor child or children during such child's or children's minority subject to deduction of the amounts paid as workers' compensation benefits on account of death as provided in section 16-1032. Each such child shall share equally in the total pension benefit to the age of majority, except that as soon as a child attains the age of majority, such pension benefit to such child shall cease and be reallocated among the remaining minor children until the last remaining child dies or reaches the age of majority.

Any payments for the benefit of a minor child shall be made on behalf of such child to the surviving spouse or, if there is none, to the legal guardian of the child.

In the event the surviving spouse or minor children of such deceased firefighter die before the aggregate amount of pension payments received by the firefighter and his or her survivor beneficiaries, if any, equals the total amount in the firefighter's employee account at the time of the first benefit payment, the difference between the total amount in the employee account and the aggregate

amount of pension payments received by the retired firefighter and his or her surviving beneficiaries, if any, shall be paid in a single sum to the firefighter's beneficiary or, in the absence of a surviving beneficiary, his or her estate.

To the extent that the retirement value at the date of death exceeds the amount required to purchase the specified retirement pension, reduced by any amounts paid as workers' compensation benefits, the excess shall be paid in the manner provided in subsection (1) of section 16-1029.

Source: Laws 1983, LB 531, § 11; Laws 1986, LB 811, § 6; Laws 1992, LB 672, § 24; Laws 1993, LB 724, § 8.

16-1031 Firefighter; disability in the line of duty; disability benefit; return to duty; conditions.

(1) Except as provided in subsection (3) of this section for temporary disability, if any firefighter becomes disabled, such firefighter shall be placed upon the roll of pensioned firefighters at the regular retirement pension of fifty percent of regular pay for the period of such disability. For purposes of this section, disability shall mean the complete inability of the firefighter, for reasons of accident or other cause while in the line of duty, to perform the duties of a firefighter as defined by fire department job descriptions or ordinance.

(2) No disability benefit payment shall be made except upon adequate proof furnished to the city, consisting of a medical examination conducted by a competent, disinterested physician who is duly licensed to practice medicine and surgery in this state and who certifies to the city that the firefighter is unable to perform the duties of a firefighter. The city, during the first three years of the payment of such benefits, shall have the right, at reasonable times, to require the disabled firefighter to undergo a medical examination at the city's expense to determine the continuance of the disability claimed. After such three-year period, the city may request the district court to order the firefighter to submit proof of the continuance of the disability claimed if the city has reasonable grounds to believe the firefighter is fraudulently receiving disability payments. The city shall have the right to demand a physical examination of the firefighter by a competent, disinterested physician who is duly licensed to practice medicine and surgery in this state and who is chosen by the city. The expense of such examination shall be borne by the city.

(3) In case of temporary disability of a firefighter received while in the line of duty, he or she shall receive his or her salary during the continuance of such disability for a period not to exceed twelve months, except that if it is ascertained by the city within twelve months that such temporary disability has become a disability as defined in this section, then the salary shall cease and he or she shall be entitled to the benefits for pensions in case of disability as provided in this section.

(4) All payments of pension or salary provided by this section shall be subject to deduction of amounts paid under the Nebraska Workers' Compensation Act. Total payments to a disabled firefighter, in excess of amounts paid as workers' compensation benefits, shall not be less than the retirement value at the date of disability. If the actuarial equivalent of the disability pension payable under this section exceeds the firefighter's retirement value at the time of the first payment, the city shall contribute such additional amounts as may be necessary, from time to time, to provide for the required disability pension.

(5) If a firefighter who was receiving a pension under this section is later determined to be no longer disabled, the pension provided for under this section shall terminate and the firefighter's vested retirement value, as reduced by any disability payments made from the retirement system, shall thereafter be held and administered in the same manner as for any nondisabled firefighter or former firefighter.

(6) If a firefighter who was receiving a pension under this section is later determined to be no longer disabled during the first three years when disability benefit payments are being paid, the firefighter may return to duty with the fire department under the following conditions:

(a) If a vacancy exists on the fire department for which the firefighter is qualified and the firefighter wishes to return to the fire department, the city shall hire the firefighter to fill the vacancy at a pay grade of not less than his or her previous pay grade; or

(b) If no vacancy exists in the fire department and the firefighter wishes to return to the fire department, the city shall place the firefighter on a waiting list and rehire the firefighter at a pay grade of not less than his or her previous pay grade when a vacancy occurs for which the firefighter is qualified.

The provisions of this subsection shall not apply to a firefighter whose disability benefit payments are terminated because of fraud on the part of the firefighter.

Source: Laws 1983, LB 531, § 12; Laws 1986, LB 811, § 7; Laws 1993, LB 724, § 9.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

16-1032 Firefighter; temporary disability; workers' compensation benefits; how treated.

No firefighter shall be entitled during any period of temporary disability to receive in full both his or her salary and his or her benefits under the Nebraska Workers' Compensation Act. All Nebraska workers' compensation benefits shall be payable in full to such firefighter as provided in the Nebraska Workers' Compensation Act, but all amounts paid by the city or its insurer under the Nebraska Workers' Compensation Act to any disabled firefighter entitled to receive a salary during such disability shall be considered as payments on account of such salary and shall be credited thereon. The remaining balance of such salary, if any, shall be payable as otherwise provided in sections 16-1020 to 16-1038.

Source: Laws 1983, LB 531, § 13; Laws 1985, LB 3, § 2; Laws 1986, LB 811, § 8.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

16-1033 Firefighter; termination of employment; benefits; how treated; vesting schedule.

In the event a firefighter quits or is discharged before his or her retirement date as defined in subsection (3) of section 16-1028, the firefighter may request and receive, as a lump-sum payment, an amount equal to the value of his or her employee account as determined at the valuation date preceding his or her

termination of employment pursuant to subdivision (9) of section 16-1021. Such firefighter, if vested, may, in lieu thereof, receive a deferred pension benefit or lump-sum benefit in an amount purchased or provided by the vested retirement value at the date of retirement. The retirement value at such retirement date shall consist of the then accumulated value of the firefighter's employee account at the date of the retirement as reduced by any lump-sum distributions received prior to retirement, together with a vested percentage of the accumulated value of the firefighter's employer account at the date of retirement. The vesting schedule shall be as follows:

(1) If the terminating firefighter has been a member of the system for less than four years, the vesting percentage shall be zero; and

(2) If the terminating firefighter has been a member of the paid department of the city for at least four years, the vesting percentage shall be forty percent. The vesting percentage shall be sixty percent after five years, eighty percent after six years, and one hundred percent after seven years.

The deferred pension benefit shall be payable on the first of the month immediately following the terminating firefighter's fifty-fifth birthday. At the option of the firefighter, such pension benefit may be paid as of the first of the month after he or she attains the age of fifty. Such election may be made by the firefighter any time prior to the payment of the pension benefits.

The deferred pension benefit shall be paid in the optional benefit forms specified at subsection (1) of section 16-1027 as elected by the firefighter. Notwithstanding anything in sections 16-1020 to 16-1042 to the contrary, if the firefighter's vested retirement value at the date of his or her termination of employment is less than three thousand five hundred dollars, such firefighter shall, upon request within one year of such termination, be paid his or her vested retirement value in the form of a single lump-sum payment.

Effective January 1, 1997, a firefighter may elect, upon his or her termination of employment, to receive his or her vested retirement value in the form of a single lump-sum payment. For a firefighter whose termination of employment is prior to January 1, 1997, this election shall be available only if the city has adopted a lump-sum distribution option for terminating firefighters in the funding medium established for the retirement system.

Upon any lump-sum payment of a terminating firefighter's retirement value under this section, such firefighter will not be entitled to any deferred pension benefit and the city and the retirement system shall have no further obligation to pay such firefighter or his or her beneficiaries any benefits under sections 16-1020 to 16-1042.

In the event that the terminating firefighter is not credited with one hundred percent of his or her employer account, the remaining nonvested portion of the account shall be forfeited and shall be deposited in the unallocated employer account. If the actuarial analysis required by section 16-1037 shows that the assets of the unallocated employer account are sufficient to provide for the projected plan liabilities, such forfeitures shall instead be used to meet the expenses incurred by the city in connection with administering the retirement system, and the remainder shall then be used to reduce the city contribution which would otherwise be required to fund pension benefits.

Source: Laws 1983, LB 531, § 14; Laws 1993, LB 724, § 10; Laws 1994, LB 1068, § 3; Laws 1998, LB 1191, § 19.

16-1034 Retirement committee; established; governing body; responsibilities; powers and duties; allocation.

A retirement committee shall be established to supervise the general operation of the retirement system. The governing body of the city shall be responsible for the general administration of such retirement system unless specific functions or all functions with regard to the administration of the retirement system are delegated, by ordinance, to the retirement committee. All costs incurred with regard to the administration of the retirement system shall be paid by the city from the unallocated employer account as provided in section 16-1036.01.

The city and retirement committee shall have all powers which are necessary for or appropriate to establishing, maintaining, managing, and administering the retirement system. Whenever sections 16-1020 to 16-1042 fail to address the allocation of duties or powers in the administration of the retirement system, such powers or duties shall be vested in the city unless such powers or duties have been delegated by ordinance to the retirement committee.

Source: Laws 1983, LB 531, § 15; Laws 1992, LB 672, § 25; Laws 1993, LB 724, § 11.

16-1035 Retirement committee; members; terms; vacancy; expenses.

Each retirement committee established pursuant to section 16-1034 shall consist of six members of which four members shall be selected by the active paid firefighters excluding firefighters identified in section 16-1039. Two members shall be designated by the city council. The members who are not participants in such retirement system shall have a general knowledge of retirement plans. Members of the governing body of such city, active members of the fire department, and members of the general public may serve on the retirement committee. The committee members shall be appointed to four-year terms. Vacancies shall be filled for the remainder of the term by a person with the same representation as his or her predecessor. Members of the retirement committee shall, subject to approval by the city council, be reimbursed for their actual and necessary expenses incurred in carrying out their duties.

Source: Laws 1983, LB 531, § 16; Laws 1992, LB 672, § 26.

16-1036 Firefighters Retirement System Fund; authorized investments; retirement committee; powers and duties.

(1) The funds in the Firefighters Retirement System Fund shall be invested by the retirement committee. The city, subject to the approval of the retirement committee, shall contract with a funding agent or agents to hold or invest the assets of the retirement system and to provide for the benefits provided by sections 16-1020 to 16-1042. The retirement committee, subject to the approval of the city, may also select an investment manager. The city, subject to approval of the retirement committee, may contract with investment managers registered under the Investment Advisers Act of 1940 to invest, reinvest, and otherwise manage such portion of the assets of the retirement system as may be assigned by the city or retirement committee.

(2) The retirement committee shall establish an investment plan which allows each member of the retirement system to allocate all contributions to his or her employee account and, if he or she commenced his or her employment after January 1, 1984, his or her employer account to the various investment options

or combinations of investment options described in such plan. Each firefighter shall have the option of investing his or her employee account and, if he or she commenced his or her employment after January 1, 1984, his or her employer account in any proportion, including full allocation, in any investment option offered by the plan. Upon the direction of the city, firefighters employed on January 1, 1984, may have the option to allocate their employer account to various investment options or combinations of investment options in any proportion, including full allocation, in any investment option offered by the plan. Each firefighter shall be given a summary of the investment plan and a detailed current description of each investment option prior to making or revising his or her allocation.

(3) The funds in the Firefighters Retirement System Fund shall be invested pursuant to the policies established by the Nebraska Investment Council.

Source: Laws 1983, LB 531, § 17; Laws 1991, LB 2, § 3; Laws 1992, LB 672, § 27; Laws 1993, LB 724, § 12; Laws 2004, LB 1097, § 1.

16-1036.01 Firefighters Retirement System Fund; schedule of investment costs; allocation.

The city and the retirement committee shall develop a schedule of investment costs relating to the investment of the funds in each of the accounts in the Firefighters Retirement System Fund, which costs shall be paid out of the funds in such accounts or assessed to the firefighters as provided in such schedule. The schedule of investment costs shall provide for the allocation of the administrative or record-keeping costs of the various investment options available to the members of the retirement system and shall assess such costs so that each member pays a fair proportion of the costs based upon his or her choice of options and number of transfers among options. All other costs related to the general operation of the retirement system established pursuant to sections 16-1020 to 16-1038 and not allocated or assessed pursuant to the schedule of investment costs shall be considered administrative costs and shall be paid by the city from the unallocated employer account.

Source: Laws 1992, LB 672, § 29.

16-1037 Retirement committee; officers; duties.

(1) It shall be the duty of the retirement committee to:

(a) Elect a chairperson, a vice-chairperson, and such other officers as the committee deems appropriate;

(b) Hold regular quarterly meetings and special meetings upon the call of the chairperson;

(c) Conduct meetings pursuant to the Open Meetings Act;

(d) Provide each employee a summary of plan eligibility requirements, benefit provisions, and investment options available to such employee;

(e) Provide, within thirty days after a request is made by a participant, a statement describing the amount of benefits such participant is eligible to receive; and

(f) Make available for review an annual report of the system's operations describing both (i) the amount of contributions to the system from both employee and employer sources and (ii) an identification of the total assets of the retirement system.

(2)(a) Beginning December 31, 1998, and each December 31 thereafter, the chairperson of the retirement committee shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to section 401(a) of the Internal Revenue Code and administered by a retirement system established pursuant to sections 16-1020 to 16-1042 and shall submit copies of such report to the members of the Nebraska Retirement Systems Committee of the Legislature. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

(i) The number of persons participating in the retirement plan;

(ii) The contribution rates of participants in the plan;

(iii) Plan assets and liabilities;

(iv) The names and positions of persons administering the plan;

(v) The names and positions of persons investing plan assets;

(vi) The form and nature of investments;

(vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the retirement committee shall cause to be prepared a quadrennial report and the chairperson shall file the same with the Public Employees Retirement Board and submit to the members of the Nebraska Retirement Systems Committee of the Legislature a copy of such report. The report shall consist of a full actuarial analysis of each such retirement plan administered by a system established pursuant to sections 16-1020 to 16-1042. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

Source: Laws 1983, LB 531, § 18; Laws 1992, LB 672, § 28; Laws 1998, LB 1191, § 20; Laws 1999, LB 795, § 8; Laws 2004, LB 821, § 8.

Cross References

Open Meetings Act, see section 84-1407.

16-1038 Retirement benefits; exemption from legal process; exception; tax-qualification requirements; benefit error; correction; appeal; tax levy authorized.

(1) The right to any benefits under the retirement system and the assets of any fund of the retirement system shall not be assignable or subject to execution,

garnishment, attachment, or the operation of any bankruptcy or insolvency laws, except that the retirement system may comply with the directions set forth in a qualified domestic relations order meeting the requirements of section 414(p) of the Internal Revenue Code. The city or retirement committee may require appropriate releases from any person as a condition to complying with any such order. The retirement system shall not recognize any domestic relations order which alters or changes benefits, provides for a form of benefit not otherwise provided for by the retirement system, increases benefits not otherwise provided by the retirement system, or accelerates or defers the time of payment of benefits. No participant or beneficiary shall have any right to any specific portion of the assets of the retirement system.

(2) The retirement system shall be administered in a manner necessary to comply with the tax-qualification requirements applicable to government retirement plans under section 401(a) of the Internal Revenue Code, including section 401(a)(9) relating to the time and manner in which benefits are required to be distributed, section 401(a)(16) relating to compliance with the maximum limitation on the plan benefits or contributions under section 415, section 401(a)(17) which limits the amount of compensation which can be taken into account under a retirement plan, section 401(a)(25) relating to the specification of actuarial assumptions, and section 401(a)(31) relating to direct rollover distribution from qualified retirement plans. Any requirements for compliance with section 401(a) of the Internal Revenue Code may be set forth in any trust or funding medium for the retirement system. This subsection shall be in full force and effect only so long as conformity with section 401(a) of the Internal Revenue Code is required for public retirement systems in order to secure the favorable income tax treatment extended to sponsors and beneficiaries of tax-qualified retirement plans.

(3) If the retirement committee determines that the retirement system has previously overpaid or underpaid a benefit payable under sections 16-1020 to 16-1042, it shall have the power to correct such error. In the event of an overpayment, the retirement system may, in addition to any other remedy that the retirement system may possess, offset future benefit payments by the amount of the prior overpayment, together with regular interest thereon.

(4) A firefighter whose benefit payment is adjusted by the retirement committee pursuant to subsection (3) of this section may request a review by the city council of the adjustment made by the retirement committee.

(5) In order to provide the necessary amounts to pay for or fund a pension plan established under sections 16-1020 to 16-1042, the mayor and council may make a levy which is within the levy restrictions of section 77-3442.

Source: Laws 1983, LB 531, § 19; Laws 1993, LB 724, § 13; Laws 1995, LB 574, § 24; Laws 1996, LB 1114, § 30.

16-1039 Firefighter serving on August 7, 1965; pension benefits.

(1) All cities of the first class having a paid fire department shall pension all firefighters of the paid fire department who were serving as such on August 7, 1965, and who did not elect coverage under the provisions of sections 35-204 to 35-215 as they existed prior to January 1, 1984, whenever such firefighters shall have first served in such fire department for the period of twenty-one years and shall elect to retire from active service and go upon the retired list.

(2) Such pension shall be paid by the city in the same manner as firefighters upon the active list are paid. Such pension shall be at least fifty percent of the amount of salary such retiring firefighter is receiving at the time he or she goes upon such pension list.

(3) Any such firefighter who retires on or after age fifty-five with less than twenty-one years of service shall receive a pension of at least fifty percent of the salary he or she was receiving at the time of his or her retirement multiplied by the ratio of the years of service to twenty-one.

(4) At the death of any such retired firefighter, the same rate of pension, as is herein provided for, shall be paid to the surviving spouse of such deceased firefighter during such time as the surviving spouse shall remain unmarried and, in case there be no surviving spouse, then the minor children, if any, of such deceased firefighter, shall be paid such pension during their minority to the age of eighteen years, except that as soon as a child of such deceased firefighter shall become eighteen years of age, such pension as to such child shall cease.

(5) Firefighters subject to subsection (1) of this section shall be subject to sections 16-1029 to 16-1032 but shall be exempt from sections 16-1024, 16-1025, 16-1027, 16-1028, and 16-1033.

Source: Laws 1983, LB 531, § 20.

16-1040 Firefighter subject to prior law; contributions; reimbursement.

After August 7, 1965, every firefighter subject to the provisions of sections 35-201 to 35-203 as they existed prior to January 1, 1984, shall contribute to the city an amount equal to five percent of his or her salary until he or she shall be entitled to retire or otherwise become eligible for a pension. No such firefighter continuing in the employment of the city as a member of such department after becoming eligible to retire shall be required to make any further contribution. Any such firefighter whose employment shall terminate, whether by discharge or otherwise, prior to the time he or she shall become entitled to a pension, and who shall have made contributions from his or her salary as provided in this section shall, upon demand, be reimbursed by the city for the amount of such contributions plus interest at five percent per annum.

Source: Laws 1983, LB 531, § 21.

16-1041 Benefits under prior law, how construed.

Nothing in sections 16-1020 to 16-1042 shall in any manner affect the right of any person now receiving or entitled to receive, now or in the future, pension or other benefits provided for in sections 35-201 to 35-216, as they exist immediately prior to January 1, 1984, to receive such pension or other benefits in all respects the same as if such sections remained in full force and effect.

Source: Laws 1983, LB 531, § 22; Laws 1985, LB 6, § 1.

16-1042 Termination of employment; transfer of benefits; when.

In the event that after four or more years of employment a firefighter terminates his or her employment for the purpose of becoming a firefighter employed by another city of the first class in Nebraska and such new employment commences within ninety days of such termination, such firefighter shall be entitled to transfer to the Firefighters Retirement System Fund of the city by

which he or she is newly employed the full amount of his or her contribution and his or her vested portion of the value of his or her employer account at the time of termination. The transferred funds shall be administered by the retirement committee of the city to which transferred. Upon such transfer, the city and the retirement system from which the firefighter transferred shall have no further obligation to such firefighter or his or her beneficiary. Following the commencement of new employment, the transferring firefighter shall be deemed a new employee for all purposes of the retirement system of the city to which he or she transferred.

Beginning January 1, 1993, a firefighter who is to receive an eligible rollover distribution, within the meaning of section 401(a)(31) of the Internal Revenue Code, from the retirement system may choose to have such distribution made in the form of a direct transfer to the trustee or custodian of a retirement plan eligible to receive the transfer under the code if the election is made in the form and within the time period required by the retirement committee and the plan to which such transfer is to be made will accept such transfer.

Source: Laws 1983, LB 531, § 23; Laws 1993, LB 724, § 14; Laws 1995, LB 574, § 25.

CHAPTER 17
CITIES OF THE SECOND CLASS AND VILLAGES

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ARTICLE 1
LAWS APPLICABLE ONLY TO CITIES OF THE SECOND CLASS

Section

Section

17-101 Cities of the second class, defined; population; exception.

All cities, towns, and villages containing more than eight hundred and not more than five thousand inhabitants shall be cities of the second class and be governed by the provisions of sections 17-101 to 17-153 unless they adopt a village government as provided in sections 17-306 to 17-309. The population of a city of the second class shall consist of the people residing within the territorial boundaries of such city and the residents of any territory duly and properly annexed to such city.

Source: Laws 1879, § 1, p. 193; Laws 1885, c. 16, § 1, p. 156; R.S.1913, § 4993; C.S.1922, § 4162; C.S.1929, § 17-101; R.S.1943, § 17-101; Laws 1971, LB 62, § 1; Laws 1993, LB 726, § 6.

A village, containing the required population, becomes a city of the second class without action being taken on its part, and the fact that at the time statutory resolution was adopted to provide for election of city officers, it had less than the requisite number of inhabitants to make it such city, is immaterial. State ex rel. Einstein v. Northup, 79 Neb. 822, 113 N.W. 540 (1907).

Quo warranto, and not bill for injunction, is appropriate remedy to test the legal existence of a city of second class where the question turns on whether the municipality contains the statutory number of inhabitants sufficient to change a village to a city of the second class. Osborn v. Village of Oakland, 49 Neb. 340, 68 N.W. 506 (1896).

Under former act, all towns and cities containing in excess of fifteen hundred and less than fifteen thousand inhabitants were created into cities of the second class without any acceptance or other act of such town, city or its inhabitants. State ex rel. Fremont, E. & M. V. R. Co. v. Babcock and Laws, 25 Neb. 709, 41 N.W. 654 (1889).

This section operates to create cities of the second class upon municipality reaching stated number of inhabitants without necessity of the acceptance thereof by municipal act. State ex rel. Hostetter v. Holden, 19 Neb. 249, 27 N.W. 120 (1886); State ex rel. Mayor of David City v. Palmer, 10 Neb. 203, 4 N.W. 965 (1880).

Though Legislature changes classification of municipality from village to city of second class, its original officers hold over until new officers are elected under amended act. State ex rel. Mayor of David City v. Palmer, 10 Neb. 203, 4 N.W. 965 (1880).

17-102 Wards; number; how determined.

Each city of the second class shall be divided into not less than two nor more than six wards, as may be provided by ordinance of the city council thereof; and each ward shall contain, as nearly as practicable, an equal portion of the population.

Source: Laws 1879, § 2, p. 193; R.S.1913, § 4994; C.S.1922, § 4163; C.S.1929, § 17-102; Laws 1935, c. 32, § 1, p. 137; C.S.Supp.,1941, § 17-102; R.S.1943, § 17-102; Laws 1969, c. 257, § 5, p. 934.

The mayor and council of city of second class may change the number and boundaries of wards subject to the limitations that there shall be not less than two, nor more than six wards. Tattersall v. Nevels, 77 Neb. 843, 110 N.W. 708 (1906).

While there is no express authority conferred upon village trustees to divide the city into wards and call an election, such power is clearly implied. State ex rel. Hostetter v. Holden, 19 Neb. 249, 27 N.W. 120 (1886).

17-103 City council; members; number; qualifications.

The city council of a city of the second class shall consist of not less than four nor more than twelve residents of the city who are registered voters.

Source: Laws 1879, § 3, p. 194; R.S.1913, § 4995; C.S.1922, § 4164; C.S.1929, § 17-103; R.S.1943, § 17-103; Laws 1973, LB 559, § 1; Laws 1994, LB 76, § 489.

17-104 City council; members; election; term; qualifications.

Each ward of each city shall have at least two council members elected in the manner provided in the Election Act. The term of office shall begin on the first regular meeting of the council in December following the statewide general election. No person shall be eligible to the office of council member who is not at the time of the election an actual resident of the ward for which he or she is elected and a registered voter.

Source: Laws 1879, § 4, p. 194; R.S.1913, § 4996; C.S.1922, § 4165; C.S.1929, § 17-104; R.S.1943, § 17-104; Laws 1969, c. 257, § 6, p. 934; Laws 1973, LB 559, § 2; Laws 1979, LB 253, § 1; Laws 1981, LB 446, § 2; Laws 1994, LB 76, § 490.

Cross References

City council, election, see section 32-533.
Election Act, see section 32-101.
Vacancies, see sections 32-568 and 32-569.

Each ward in each city is required to have at least two councilmen elected by the qualified electors of their respective wards, and there is no such office as a councilman at large. State ex rel. Barron v. Neff, 87 Neb. 615, 127 N.W. 881 (1910).

Councilman is required to be an elector. Haywood v. Marshall, 53 Neb. 220, 73 N.W. 449 (1897).

An ordinance creating wards requires an affirmative vote of a majority of the councilmen. State ex rel. Grosshans v. Gray, 23 Neb. 365, 36 N.W. 577 (1888).

17-105 City council; meetings; quorum.

Regular meetings of the city council shall be held at such times as the council may provide by ordinance. A majority of all the members elected to the council shall constitute a quorum for the transaction of any business, but a fewer number may adjourn from time to time and compel the attendance of absent members. Unless a greater vote is required by law, an affirmative vote of at least one-half of the elected members shall be required for the transaction of any business.

Source: Laws 1879, § 5, p. 194; R.S.1913, § 4997; C.S.1922, § 4166; C.S.1929, § 17-105; R.S.1943, § 17-105; Laws 1995, LB 93, § 1.

17-106 City council; special meetings.

The mayor or any three councilmen shall have power to call special meetings of the city council, the object of which shall be submitted to the council in writing; and the call and object, as well as the disposition thereof, shall be entered upon the journal by the clerk.

Source: Laws 1879, § 13, p. 196; R.S.1913, § 4998; C.S.1922, § 4167; C.S.1929, § 17-106.

Any defect in the call for a special meeting of the council of a city of the second class is immaterial if all members of the council are present and participated in the meeting without objection. Pokorny v. City of Schuyler, 202 Neb. 334, 275 N.W.2d 281 (1979).

Notice of special meetings need not be given to a council member out of the state or physically unable to be present. Burrows v. Keebaugh, 120 Neb. 136, 231 N.W. 751 (1930).

17-107 Mayor; qualifications; election; officers; appointment; removal; police officers; appointment; removal; procedure.

(1) A mayor of a city of the second class shall be elected in the manner provided in the Election Act. The mayor shall be a resident and registered voter of the city. If the president of the council assumes the office of mayor for the unexpired term, there shall be a vacancy on the council which vacancy shall be filled as provided in section 32-568. The mayor, with the consent of the council, may appoint such officers as shall be required by ordinance or otherwise required by law. Such officers may be removed from office by the mayor. The mayor, by and with the consent of the council, shall appoint such a number of regular police officers as may be necessary. All police officers appointed by the mayor and council shall be removable at any time by the mayor. A police officer, including the chief of police, may appeal such removal or other disciplinary action to the city council. After a hearing, the city council may uphold, reverse, or modify the removal or disciplinary action.

(2) The city council shall by ordinance adopt rules and regulations governing the removal or discipline of any police officer, including the chief of police. The ordinance shall include a procedure for making application for an appeal, specifications on the period of time within which such application shall be made, and provisions on the manner in which the appeals hearing shall be conducted. Both the police officer and the individual imposing the disciplinary action shall have the right at the hearing to be heard and to present evidence to the city council for its consideration. Not later than thirty days following the adjournment of the meeting at which the hearing was held, the city council shall vote to uphold, reverse, or modify the removal or disciplinary action. The failure of the city council to act within thirty days or the failure of a majority of the elected council members to vote to reverse or modify the removal or disciplinary action shall be construed as a vote to uphold the removal or disciplinary action. The decision of the city council shall be based upon its determination that, under the facts and evidence presented at the hearing, the challenged removal or disciplinary action was necessary for the proper management and the effective operation of the police department in the performance of its duties under the statutes of the State of Nebraska. Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders.

Source: Laws 1879, § 6, p. 194; Laws 1881, c. 23, § 1, p. 168; R.S.1913, § 4999; Laws 1921, c. 155, § 1, p. 637; C.S.1922, § 4168; Laws 1923, c. 67, § 3, p. 203; Laws 1925, c. 36, § 1, p. 143; C.S.1929, § 17-107; R.S.1943, § 17-107; Laws 1955, c. 38, § 1, p. 151; Laws 1969, c. 257, § 7, p. 935; Laws 1972, LB 1032, § 104; Laws 1973, LB 559, § 2; Laws 1974, LB 1025, § 1; Laws 1976, LB 441, § 1; Laws 1976, LB 782, § 13; Laws 1994, LB 76, § 491; Laws 1995, LB 346, § 1.

Cross References

Election Act, see section 32-101.

Mayor with consent of council appoints the city attorney and the council fixes his fees within statutory limits. Darnell v. City of Broken Bow, 139 Neb. 844, 299 N.W. 274 (1941).

Power to employ counsel, implied as it is herein, is not wholly taken away by statutory provisions and, when regular salaried attorney is ill, absent, or disqualified and the defense of city is necessary, a special council may be employed and paid. Meeske v. Baumann, 122 Neb. 786, 241 N.W. 550 (1932), 83 A.L.R. 131 (1932).

Office of chief of police and office of overseer of streets are separate, although both may be held by the same person. Mead v. State ex rel. Sperling, 73 Neb. 754, 103 N.W. 433 (1905).

17-107.01 Repealed. Laws 1975, LB 323, § 6.

17-107.02 Repealed. Laws 1994, LB 76, § 615.

17-108 Officers; salaries.

The officers and employees of the city shall receive such compensation as the mayor and council shall fix by ordinance.

Source: Laws 1879, § 7, p. 195; Laws 1881, c. 23, § 2, p. 168; Laws 1911, c. 16, § 1, p. 133; R.S.1913, § 5000; Laws 1919, c. 46, § 1, p. 130; C.S.1922, § 4169; C.S.1929, § 17-108; Laws 1935, c. 36, § 3, p. 149; C.S.Supp.,1941, § 17-108; Laws 1943, c. 30, § 2, p. 140; R.S.1943, § 17-108; Laws 1945, c. 25, § 1, p. 134; Laws 1947, c. 31, § 1(1), p. 140; Laws 1949, c. 21, § 1, p. 92; Laws 1953, c. 33, § 1, p. 123; Laws 1969, c. 89, § 1, p. 452.

To employ an attorney as a private practitioner, who is also city attorney, to foreclose tax sale certificates on a percent basis violates this and other sections, though, in proper cases, he may collect for his services on basis of quantum meruit. Darnell v. City of Broken Bow, 139 Neb. 844, 299 N.W. 274 (1941).

Provision for compensation of employees is not required to be in writing, and may be fixed at time of employment. Morearty v. City of McCook, 117 Neb. 113, 219 N.W. 839 (1928).

While the statute does not fix the salary of the mayor, it directs that the mayor and other officers named shall receive salaries to be fixed by ordinance. Dean v. State ex rel. Miller, 56 Neb. 301, 76 N.W. 555 (1898).

17-108.01 Repealed. Laws 1949, c. 21, § 4.

17-108.02 Officers and employees; merger of offices or employment; salaries.

All officers and employees of a city of the second class shall receive such compensation as the mayor and council may fix at the time of their appointment or employment subject to the limitations set forth in this section.

The local governing body of the city may at its discretion by ordinance combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except mayor and council member, with any other elective or appointive office or employment so that one or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time.

The city manager in a city under the city manager plan of government as provided in Chapter 19, article 6, may in his or her discretion combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except mayor and council member, with any other elective or appointive office or employment so that one or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time.

The offices or employments so merged and combined shall always be construed to be separate, and the effect of the combination or merger shall be limited to a consolidation of official duties only. The salary or compensation of the officer or employee holding the merged and combined offices or employments or offices and employments shall not be in excess of the maximum amount provided by law for the salary or compensation of the office, offices, employment, or employments so merged and combined. For purposes of this section, volunteer firefighters and ambulance drivers shall not be considered officers.

Source: Laws 1879, § 7, p. 195; Laws 1881, c. 23, § 2, p. 168; Laws 1911, c. 16, § 1, p. 133; R.S.1913, § 5000; Laws 1919, c. 46, § 1, p. 130;

C.S.1922, § 4169; C.S.1929, § 17-108; Laws 1935, c. 36, § 3, p. 149; C.S.Supp.,1941, § 17-108; Laws 1943, c. 30, § 2, p. 140; R.S.1943, § 17-108; Laws 1945, c. 25, § 1, p. 135; Laws 1947, c. 31, § 1(3), p. 140; Laws 1972, LB 1145, § 2; Laws 1984, LB 368, § 2; Laws 1984, LB 682, § 7; Laws 1990, LB 756, § 2; Laws 1990, LB 931, § 3; Laws 1991, LB 12, § 2; Laws 1994, LB 76, § 492.

17-108.03 Repealed. Laws 1959, c. 266, § 1.

17-109 Repealed. Laws 1973, LB 559, § 10.

17-110 Mayor; general duties and powers.

The mayor shall preside at all meetings of the city council, and may vote when his or her vote shall be decisive and the council is equally divided on any pending matter, legislation, or transaction, and the mayor shall, for the purpose of such vote, be deemed to be a member of the council. He or she shall have superintendence and control of all the officers and affairs of the city, and shall take care that the ordinances of the city and all laws governing cities of the second class are complied with.

Source: Laws 1879, § 10, p. 195; R.S.1913, § 5002; C.S.1922, § 4171; C.S.1929, § 17-110; R.S.1943, § 17-110; Laws 1957, c. 55, § 3, p. 266; Laws 1975, LB 172, § 3; Laws 1980, LB 662, § 4.

The mayor has no power to suspend the operation of an ordinance which contains no provision in itself empowering him so to do. Pulver v. State, 83 Neb. 446, 119 N.W. 780 (1909).

The mayor and council have power to compromise and settle claims against the city. State ex rel. Fuller v. Martin, 27 Neb. 441, 43 N.W. 244 (1889).

17-111 Mayor; ordinances; veto power; passage over veto.

The mayor shall have power to veto or sign any ordinance passed by the city council; *Provided,* any ordinance vetoed by the mayor may be passed over his veto by a vote of two-thirds of the members of the council. If the mayor neglects or refuses to sign any ordinance, and return the same with his objections in writing at the next regular meeting of the council, the same shall become a law without his signature.

Source: Laws 1879, § 11, p. 195; R.S.1913, § 5003; C.S.1922, § 4172; C.S.1929, § 17-111.

Mayor's approval may be condition precedent to the validity of the ordinance by its terms, and failure of such approval during mayor's incumbency renders ordinance void. Rooney v. City of South Sioux City, 111 Neb. 1, 195 N.W. 474 (1923).

Where an ordinance or resolution is passed either with or without the mayor's concurrence, he, being the executive officer, is obliged to execute the duties therein contained irrespective of his sanction or disapproval thereof. State ex rel. Fuller v. Martin, 27 Neb. 441, 43 N.W. 244 (1889).

The duty of the mayor is to guard and protect the rights of the city. Greenwood v. Cobbey, 26 Neb. 449, 42 N.W. 413 (1889).

17-112 Mayor; recommendations to city council.

The mayor shall, from time to time, communicate to the city council such information and recommend such measures as, in his opinion, may tend to the improvement of the finances, the police, health, security, ornament, comfort, and general prosperity of the city.

Source: Laws 1879, § 12, p. 196; R.S.1913, § 5004; C.S.1922, § 4173; C.S.1929, § 17-112.

Statements of mayor as to qualification and integrity of an employee of city are privileged if made in good faith. Greenwood v. Cobbey, 26 Neb. 449, 42 N.W. 413 (1889).

17-113 Mayor; reports of officers; power to require.

The mayor shall have the power, when he deems it necessary, to require any officer of the city to exhibit his accounts or other papers, and to make reports to the council, in writing, touching any subject or matter pertaining to his office.

Source: Laws 1879, § 14, p. 196; R.S.1913, § 5005; C.S.1922, § 4174; C.S.1929, § 17-113.

17-114 Mayor; territorial jurisdiction.

The mayor shall have such jurisdiction as may be vested in him by ordinance, over all places within five miles of the corporate limits of the city, for the enforcement of any health or quarantine ordinance and regulation thereof, and shall have jurisdiction in all matters vested in him by ordinance, excepting taxation, within one-half mile of the corporate limits of said city.

Source: Laws 1879, § 15, p. 196; R.S.1913, § 5006; C.S.1922, § 4175; C.S.1929, § 17-114.

While it is not determined whether mayor and city council under this section may or may not regulate slaughterhouses outside the city limits, they cannot give vitality and force to such a regulation passed by the board of health in such matter. State v. Temple, 99 Neb. 505, 156 N.W. 1063 (1916).

17-115 Repealed. Laws 1994, LB 76, § 615.

17-116 Repealed. Laws 1980, LB 741, § 1.

17-117 Mayor; remission of fines; pardons; powers.

The mayor shall have power to remit fines and forfeitures, and to grant reprieves and pardons for all offenses arising under the ordinances of the city.

Source: Laws 1879, § 18, p. 196; R.S.1913, § 5009; C.S.1922, § 4178; C.S.1929, § 17-117.

17-118 Police; arrest; power.

The police officers of the city shall have the power to arrest all offenders against the laws of the state or of the city, by day or by night, in the same manner as the sheriff and to keep such offenders in the city prison or other place to prevent their escape until trial can be had before the proper officer.

Source: Laws 1879, § 19, p. 197; R.S.1913, § 5010; C.S.1922, § 4179; C.S.1929, § 17-118; R.S.1943, § 17-118; Laws 1988, LB 1030, § 5.

Police officers are not provided with countywide jurisdiction pursuant to this statute. State v. Tingle, 239 Neb. 558, 477 N.W.2d 544 (1991).

A police officer of a city of the second class has the same powers as a sheriff or constable to arrest offenders against the laws of the state or city within his county. Henning v. City of Hebron, 186 Neb. 381, 183 N.W.2d 756 (1971).

Policemen of city of second class have all the powers of a sheriff or constable in making arrest. State v. Carpenter, 181 Neb. 639, 150 N.W.2d 129 (1967).

17-119 Overseer of streets; duties.

The overseer of the streets shall, subject to the orders of mayor and council, have general charge, direction, and control of all work on the streets, side-

walks, culverts, and bridges of the city, and shall perform such other duties as the council may require.

Source: Laws 1879, § 21, p. 197; R.S.1913, § 5012; C.S.1922, § 4181; C.S.1929, § 17-120.

Cities of second class have exclusive control of streets, sidewalks, etc., must maintain them in a safe condition, and are liable for a breach of duty in respect thereto. Goodrich v. University Place, 80 Neb. 774, 115 N.W. 538 (1908).

17-120 Public morals; powers; restrictions.

A city of the second class shall have power to restrain, prohibit, and suppress houses of prostitution and unlicensed tippling shops, gambling and gambling houses, and other disorderly houses and practices, and all kinds of public indecencies, and all lotteries or fraudulent devices and practices for the purpose of obtaining money or property, except that nothing in this section shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conducted in accordance with the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act. It may license, regulate, or prohibit billiard halls and billiard tables, pool halls and pool tables, and bowling alleys.

Source: Laws 1879, § 39, I, p. 201; Laws 1881, c. 24, § 1, p. 194; R.S.1913, § 5014; Laws 1917, c. 99, § 1, p. 263; C.S.1922, § 4183; C.S.1929, § 17-122; R.S.1943, § 17-120; Laws 1986, LB 1027, § 189; Laws 1991, LB 849, § 62; Laws 1993, LB 138, § 64.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

Bowling alley open to the public on the payment of a fee and operated under the name of ''Recreation Club'' is not exempt from the provisions of an ordinance providing for license passed under the authority of this section. State ex rel. City of Friend v. Friend Recreation Club, 123 Neb. 740, 243 N.W. 876 (1932).

City cannot prohibit sale of card tables in places of business, nor card playing under all circumstances. In re Sapp, 79 Neb. 781, 113 N.W. 261 (1907).

Power was conferred on cities of second class to regulate billiard and pool halls. State ex rel. McMonies v. McMonies, 75 Neb. 443, 106 N.W. 454 (1906).

Validity of ordinance can be questioned only by one whose rights are directly affected thereby. Flick v. City of Broken Bow, 67 Neb. 529, 93 N.W. 729 (1903).

Ordinance to regulate closing of saloons relates to general welfare and is authorized under the police power of the city. Ex parte Wolf, 14 Neb. 24, 14 N.W. 660 (1883).

Ordinances of city of second class punishing trespassers upon real or personal property are valid. City of Brownville v. Cook, 4 Neb. 101 (1875).

17-121 Health and sanitation; rules and regulations; board of health; members; powers.

(1) A city of the second class shall have power to make regulations to prevent the introduction and spread of contagious, infectious, or malignant diseases into the city, to make quarantine laws for that purpose, and to enforce the same.

(2) In cities with a commission form of government as provided in Chapter 19, article 4, and cities with a city manager plan of government as provided in Chapter 19, article 6, a board of health shall be created consisting of five members: The mayor, who shall be chairperson, and four other members. One member shall be a physician or health care provider, if one can be found who is willing to serve. Such physician or health care provider, if appointed, shall be the board's medical advisor. If the city manager has appointed a chief of police, the chief of police shall serve on the board as secretary and quarantine officer.

(3) In all other cities, a board of health shall be created consisting of four members: The mayor, who shall be chairperson, the president of the city council, and two other members. One member shall be a physician or health care provider, if one can be found who is willing to serve. Such physician or health care provider, if appointed, shall be the board's medical advisor. If the mayor has appointed a chief of police, the chief of police shall serve on the board as secretary and quarantine officer.

(4) A majority of such board shall constitute a quorum and shall enact rules and regulations, which shall have the force and effect of law, to safeguard the health of the people of such city, may enforce them, and may provide fines and punishments for the violation thereof. The board of health shall have power to and shall make all needful rules and regulations relating to matters of sanitation of such city, including the removal of dead animals, the sanitary condition of the streets, alleys, vacant grounds, stockyards, cattle and hog pens, wells, cisterns, privies, waterclosets, cesspools, stables, and all buildings and places not specified where filth, nuisances, or offensive matter is kept or is liable to or does accumulate. It may regulate, suppress, and prevent the occurrence of nuisances and enforce all laws of the state and ordinances of the city relating to the same or to matters of sanitation of such city. The board shall also have control of hospitals, dispensaries, places for treatment of sick, and matters relating to the same under such restrictions and provisions as may be provided by ordinance of such city.

Source: Laws 1879, § 39, II, p. 201; Laws 1881, c. 24, § 1, p. 194; Laws 1895, c. 14, § 1, II, p. 109; R.S.1913, § 5015; Laws 1919, c. 44, § 1, p. 128; C.S.1922, § 4184; C.S.1929, § 17-123; R.S.1943, § 17-121; Laws 1977, LB 190, § 2; Laws 1993, LB 119, § 2; Laws 1994, LB 1019, § 2; Laws 1996, LB 1162, § 1.

City of second class may enjoin nuisance maintained outside corporate limits. City of Lyons v. Betts, 184 Neb. 746, 171 N.W.2d 792 (1969).

Where a nuisance is admitted to exist, members of the board of health have the legal discretion to determine the manner of abating the same. State ex rel. Glatfelter v. Hart, 106 Neb. 61, 182 N.W. 567 (1921).

The Legislature has not conferred upon the board of health power to adopt a regulation making it criminal to maintain a slaughterhouse outside of the city. State v. Temple, 99 Neb. 505, 156 N.W. 1063 (1916).

Neither city nor officers of its board of health are liable for damages sustained by reason of their acts committed in the exercise of police power, but a city may be liable for its neglect of an undelegable duty. Sheets v. City of McCook, 95 Neb. 139, 145 N.W. 252 (1914).

The powers and jurisdiction of cities of second class and townships are entirely separate, distinct, and unlike in all respects. Chilton v. Town of Gratton, 82 F. 873 (Cir. Ct., D. Neb. 1897).

17-122 Hospital; establishment and control.

A second-class city shall have power to erect, establish, and regulate hospitals, and to provide for the government and support of the same.

Source: Laws 1879, § 39, III, p. 201; Laws 1881, c. 24, § 1, p. 194; R.S.1913, § 5016; C.S.1922, § 4185; C.S.1929, § 17-124.

17-123 Public health; regulations; water; power to supply.

A second-class city shall have power to make regulations to secure the general health of the city, to prevent and remove nuisances, and to provide the city with water.

Source: Laws 1879, § 39, IV, p. 201; Laws 1881, c. 24, § 1, p. 194; R.S.1913, § 5017; C.S.1922, § 4186; C.S.1929, § 17-125.

City of second class may bring action to enjoin maintenance of a nuisance. City of Lyons v. Betts, 184 Neb. 746, 171 N.W.2d 792 (1969).

It is not incumbent upon city to enact ordinance prohibiting a nuisance before it has a right to apply to a court of equity for relief. City of Syracuse v. Farmers Elevator, Inc., 182 Neb. 783, 157 N.W.2d 394 (1968).

Village may bring action in equity to enjoin maintenance of public nuisance. Village of Kenesaw v. Chicago, B. & Q. R. R. Co., 91 Neb. 619, 136 N.W. 990 (1912).

17-123.01 Litter; removal; notice; action by city or village.

Each second-class city and village may, by ordinance, prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or village and require the removal thereof so as to abate any nuisance occasioned thereby. If the owner fails to remove such litter, after five days' notice by publication and by certified mail, the city or village, through its proper officers, shall remove the litter or cause it to be removed, and shall assess the cost thereof against the property so benefited as provided by ordinance.

Source: Laws 1975, LB 117, § 2.

17-124 Police; power to establish.

A second-class city shall have power to establish a night watch and police, and to define the duties and powers of the same.

Source: Laws 1879, § 39, V, p. 201; Laws 1881, c. 24, § 1, p. 195; R.S.1913, § 5018; C.S.1922, § 4187; C.S.1929, § 17-126.

17-125 Transferred to sections 17-528.02 and 17-528.03.

17-126 Public market; establishment; regulation.

A second-class city shall have power to purchase, hold and own grounds for, and to erect, establish and regulate market houses and market places.

Source: Laws 1879, § 39, VII, p. 201; Laws 1881, c. 24, § 1, p. 195; R.S.1913, § 5020; C.S.1922, § 4189; C.S.1929, § 17-128.

17-127 Public buildings; power to erect.

A second-class city shall have power to provide for the erection and government of any useful or necessary building for the use of the city.

Source: Laws 1879, § 39, VIII, p. 201; Laws 1881, c. 24, § 1, p. 195; R.S.1913, § 5021; C.S.1922, § 4190; C.S.1929, § 17-129.

17-128 Sunday; business and amusements; regulation.

A second-class city shall have power to prevent any desecration of the Sabbath day, commonly called Sunday, and to prohibit public amusements, shows, exhibitions or ordinary business pursuits upon said day.

Source: Laws 1881, c. 24, § 1, p. 195; R.S.1913, § 5022; C.S.1922, § 4191; C.S.1929, § 17-130.

17-129 Disorderly conduct; power to prevent.

A second-class city shall have power to prevent intoxication, fighting, quarreling, dog fights, cock fights, and all disorderly conduct.

Source: Laws 1881, c. 24, § 1, p. 195; R.S.1913, § 5023; C.S.1922, § 4192; C.S.1929, § 17-131.

The power of municipalities to define and punish the offense of driving a motor vehicle while under the influence of intoxicating liquor is not limited by state laws regulating motor vehicle traffic. Gembler v. City of Seward, 136 Neb. 196, 285 N.W. 542 (1939), modified on rehearing 136 Neb. 916, 288 N.W. 545 (1939).

17-130 Fire escapes; exits; regulation.

A second-class city shall have power to prevent the use of any opera house, city hall, church or other building resorted to by the people for worship, amusement or for public assemblages, unless such opera house, city hall, church or other building shall be provided with suitable, ample and sufficient fire escapes, and suitable, ample and sufficient means of exit and entrance.

Source: Laws 1881, c. 24, § 1, p. 195; R.S.1913, § 5024; C.S.1922, § 4193; C.S.1929, § 17-132.

17-131 Safety regulations.

A second-class city shall have power to prescribe the thickness, strength, and manner of constructing stone, brick and other buildings, and to prescribe and direct the number and construction of means of exit and entrance and the construction of fire escapes.

Source: Laws 1881, c. 24, § 1, p. 196; R.S.1913, § 5025; C.S.1922, § 4194; C.S.1929, § 17-133.

17-132 Places of amusement; safety regulations; revocation of license.

A second-class city shall have power to regulate, license, tax, and suppress places of amusement, and to revoke the licenses therefor when such places are not provided with sufficient and ample means of exit and entrance, and when the same are not safe for such uses, or when the licensee has been convicted of any violation of the ordinances in relation to such places, and to declare from time to time when such place or places are unsafe for such uses.

Source: Laws 1881, c. 24, § 1, p. 195; R.S.1913, § 5026; C.S.1922, § 4195; C.S.1929, § 17-134.

City is not authorized under this section to prohibit playing a game of cards for amusement. In re Sapp, 79 Neb. 781, 113 N.W. 261 (1907).

17-133 Hotels; cabs; runners for; licensing and regulation.

A second-class city shall have power to license, tax, and regulate runners for stages, cars, hotels, public buildings or other things or persons.

Source: Laws 1881, c. 24, § 1, p. 196; R.S.1913, § 5027; C.S.1922, § 4196; C.S.1929, § 17-135.

17-134 Peddlers; pawnbrokers; entertainers; licensing and regulation.

A second-class city shall have power to license, tax, suppress, regulate and prohibit hawkers, peddlers, pawnbrokers, keepers of ordinaries, theatrical and other exhibitions, shows and other amusements, and to revoke such licenses at pleasure.

Source: Laws 1881, c. 24, § 1, p. 196; R.S.1913, § 5028; C.S.1922, § 4197; C.S.1929, § 17-136.

17-135 Liquor; sale to minor; power to prohibit.

A second-class city shall have power to forbid, punish, and prohibit the selling or giving away of any intoxicating, malt, vinous, mixed, or fermented liquor to any minor.

Source: Laws 1881, c. 24, § 1, p. 196; R.S.1913, § 5029; C.S.1922, § 4198; C.S.1929, § 17-137; R.S.1943, § 17-135; Laws 1986, LB 1177, § 2.

Cities of the second class may impose an occupation tax upon liquor dealers in addition to license tax. State ex rel. Sage v. Bennett, 19 Neb. 191, 26 N.W. 714 (1886).

17-136 Fire hazards; elimination.

A second-class city shall have power to prevent the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stovepipes, ovens, boilers, apparatus used in and about any building or manufactory and to cause the same to be removed or placed in a safe condition, as the council may prescribe, when considered dangerous. It may regulate and prevent the carrying on of manufactories dangerous in causing and promoting fires. It may prevent the deposit of ashes in unsafe places, and cause all such buildings and enclosures as may be in a dangerous state to be put in safe condition.

Source: Laws 1881, c. 24, § 1, p. 196; R.S.1913, § 5030; C.S.1922, § 4199; C.S.1929, § 17-138.

Municipality may enact ordinance to protect public from the dangers resulting from the use of gas. Clough v. North Central Gas Co., 150 Neb. 418, 34 N.W.2d 862 (1948).

17-137 Explosives; storage; fireworks; regulation.

A second-class city shall have power to regulate and prevent storage of gunpowder, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitroglycerine, petroleum or any of the productions thereof and other material, and the use of lights in stables and shops and other places, and the building of bonfires. It may regulate, prohibit and restrain the use of fireworks, firecrackers, Roman candles, sky rockets, and other pyrotechnic displays.

Source: Laws 1881, c. 24, § 1, p. 196; R.S.1913, § 5031; C.S.1922, § 4200; C.S.1929, § 17-139.

17-138 Animals; cruelty, prevention of.

A second-class city shall have power to prohibit and punish cruelty to animals.

Source: Laws 1881, c. 24, § 1, p. 197; R.S.1913, § 5032; C.S.1922, § 4201; C.S.1929, § 17-140.

17-139 Traffic; sales; regulation.

A second-class city shall have power by ordinance to regulate traffic and sales upon the streets, sidewalks and public places.

Source: Laws 1881, c. 24, § 1, p. 197; R.S.1913, § 5033; C.S.1922, § 4202; C.S.1929, § 17-141.

The power of municipalities, under this section, to define and punish the offense of driving a motor vehicle while under the influence of intoxicating liquor, is not limited by the Uniform Motor Vehicle Act. Gembler v. City of Seward, 136 Neb. 196, 285 N.W. 542 (1939), modified on rehearing 136 Neb. 916, 288 N.W. 545 (1939).

17-140 Signs and handbills; regulation.

A second-class city shall have power to regulate and prevent the use of streets, sidewalks, and public grounds for signs, sign posts, telegraph or other poles, racks, posting of handbills and advertisements.

Source: Laws 1881, c. 24, § 1, p. 197; R.S.1913, § 5034; C.S.1922, § 4203; C.S.1929, § 17-142.

City of second class has authority by ordinance to regulate and prevent use of sidewalks and streets and to remove obstructions therefrom, but such body cannot act arbitrarily and deny one citizen privileges which it grants to others. City of Pierce v. Schramm, 116 Neb. 263, 216 N.W. 809 (1927).

Municipalities may grant the use of streets to telephone company for its poles and lines. City of Plattsmouth v. Nebraska Telephone Co., 80 Neb. 460, 114 N.W. 588 (1908).

The term ''public roads'' does not include streets and alleys of a municipality, and the unauthorized use of such thoroughfares constitutes a public nuisance. Nebraska Telephone Co. v. Western Independent Long Distance Telephone Co., 68 Neb. 772, 95 N.W. 18 (1903).

17-141 Sidewalks and substructures; regulation.

A second-class city shall have power to regulate the use of sidewalks and all structures thereunder.

Source: Laws 1881, c. 24, § 1, p. 197; R.S.1913, § 5035; C.S.1922, § 4204; C.S.1929, § 17-143.

City is bound to keep its sidewalks reasonably safe for travel, and it is the duty of the officers of the city to exercise reasonable diligence in knowing of dangerous conditions thereof. Anderson v. City of Albion, 64 Neb. 280, 89 N.W. 794 (1902).

Streets must be kept in a reasonably safe condition for public travel, and a petition sufficiently charges negligence if it alleges facts from which a person may reasonably infer street was not kept in such condition. City of Aurora v. Cox, 43 Neb. 727, 62 N.W. 66 (1895).

17-142 Streets; moving of buildings; other obstructions; regulation.

A second-class city shall have power to regulate and prevent the moving of buildings through the streets, and to regulate and prohibit the piling of building material, or any excavation or obstruction of the streets.

Source: Laws 1881, c. 24, § 1, p. 197; R.S.1913, § 5036; C.S.1922, § 4205; C.S.1929, § 17-144.

17-143 Railroads; location, grade, and crossing; regulation.

A second-class city shall have power to provide for and change the location, grade, and crossing of any railroad.

Source: Laws 1881, c. 24, § 1, p. 197; R.S.1913, § 5037; C.S.1922, § 4206; C.S.1929, § 17-145.

17-144 Railroads; crossings; grades; drainage; regulation.

A second-class city shall have power to require railroad companies to keep flagmen at railroad crossings of streets, and provide protection against injury to persons and property in the use of such railroads. It may compel any railroad to raise or lower its railroad tracks to conform to any grade which may at any time be established by such city or village, and, where such tracks run lengthwise of any street, alley or highway, to keep its railroad tracks on a level with the street surface, and so that such tracks may be crossed at any place on such alley or highway. It may compel and require railroad companies to make and keep open streets, and to keep in repair ditches, drains, sewers and culverts along and under their railroad tracks, so that filthy or stagnant pools of water cannot stand on their grounds or rights-of-way, and so that drainage of adjacent property or streets shall not be impeded.

Source: Laws 1881, c. 24, § 1, p. 197; R.S.1913, § 5038; C.S.1922, § 4207; C.S.1929, § 17-146.

17-145 Sewers and drains; regulation.

A second-class city shall have power to construct and keep in repair culverts, drains, sewers and cesspools, and to regulate the use thereof.

Source: Laws 1881, c. 24, § 1, p. 198; R.S.1913, § 5039; C.S.1922, § 4208; C.S.1929, § 17-147.

Where a municipal corporation discharges sewage for a period of over ten years, in an adverse manner into a gully, it may acquire an easement therefor. Hall v. City of Friend, 134 Neb. 652, 279 N.W. 346 (1938).

City is liable to owner of property for overflow of surface waters caused by improvement of drainage system. Naysmith v. City of Auburn, 95 Neb. 582, 146 N.W. 971 (1914).

Cities of second class have the right to construct and regulate sewers, and such authority being expressly granted necessarily implies the power to issue bonds for the payment of the same. State ex rel. City of Norfolk v. Babcock, 22 Neb. 614, 35 N.W. 941 (1888).

17-146 Refunding bonds; power to issue.

A second-class city shall have power to issue bonds in place of, or to supply means to meet its maturing bonds, or for the consolidation or funding of the same.

Source: Laws 1881, c. 24, § 1, p. 198; R.S.1913, § 5040; C.S.1922, § 4209; C.S.1929, § 17-148.

Where bonds, when issued by a city, contain recitals insuring that ''all preliminary steps had been taken in manner and form required by law'', if it appears later when bonds are in the hands of a purchaser that a fact stated in the recitals is untrue, the city is estopped to so prove or contend. South Sioux City v. Hanchett Bond Co., 19 F.2d 476 (8th Cir. 1927).

Findings of a board, authorized by the Legislature to determine questions of fact upon which limitations of amount of issue of bonds depends, are conclusive in favor of bona fide purchasers of such bonds. Chilton v. Town of Gratton, 82 F. 873 (Cir. Ct., D. Neb. 1897).

17-147 Fire department; organization and equipment.

A second-class city shall have power to procure fire engines, hooks, ladders, buckets and other apparatus, to organize fire engine, hook and ladder, and bucket companies, to prescribe rules of duty and the government thereof with such penalties as the council may deem proper, not exceeding one hundred dollars, and to make all necessary appropriations therefor.

Source: Laws 1879, § 39, IX, p. 201; Laws 1881, c. 24, § 1, p. 198; R.S.1913, § 5041; C.S.1922, § 4210; C.S.1929, § 17-149.

Power given in this section to procure fire engines, hooks, ladders, etc., is totally different from the power to issue obligations unimpeachable in the hands of third persons in payment therefor. State ex rel. City of O'Neill v. Marsh, 121 Neb. 841, 238 N.W. 760 (1931).

A city may impose an occupation tax by ordinance upon a fire insurance company for the purpose of maintaining a volunteer fire department. German-American Fire Ins. Co. v. City of Minden, 51 Neb. 870, 71 N.W. 995 (1897).

17-148 City council; president; acting president; powers.

The council shall elect one of its own body who shall be styled the president of the council and who shall preside at all meetings of the council in the absence of the mayor. In the absence of the president, it shall elect one of its own body to occupy his place temporarily, who shall be styled acting president of the council. The president, and acting president, when occupying the place of the mayor, shall have the same privileges as other members of the council; and all acts of the president or acting president, while so acting, shall be as binding upon the council and upon the city as if done by the mayor.

Source: Laws 1879, § 39, X, p. 201; Laws 1881, c. 24, § 1, p. 198; R.S.1913, § 5042; C.S.1922, § 4211; C.S.1929, § 17-150.

17-149 Sewerage and drainage; districts; regulation.

The mayor and council of any second-class city, or the board of trustees of any village, are hereby authorized to lay off such city and the territory one mile beyond its corporate limits into suitable districts for the purpose of establishing a system of sewerage and drainage. They may (1) provide such system; (2) regulate the construction, repairs, and use of sewers and drains and of all proper house connections and branches; (3) compel all proper connections therewith and branches from other streets, avenues, and alleys, and from private property; and (4) provide penalties for any obstruction of or injury to any sewer or part thereof, or failure to make connections therewith.

Source: Laws 1903, c. 22, § 1, p. 254; R.S.1913, § 5043; C.S.1922, § 4212; C.S.1929, § 17-151; R.S.1943, § 17-149; Laws 1949, c. 22, § 1(1), p. 94; Laws 1979, LB 136, § 2.

17-149.01 Sewerage and drainage; failure of property owner to connect; notice; cost; assessment; collection.

In case any property owner neglects or fails within a period of ten days after notice has been given to him or her by certified or registered mail or by publication in some newspaper published or of general circulation in such city or village to make such connection with the sewerage system, the governing body of such city or village shall have power to cause the same to be done, to assess the cost thereof against the property, and to collect the assessment thus made in the manner provided for collection of other special taxes and assessments.

Source: Laws 1949, c. 22, § 1(2), p. 94; Laws 1987, LB 93, § 4.

17-150 Sewerage system; establishment; estimates; duties of engineer; contracts; advertisement for bids.

The city engineer, when ordered to do so by the city council, shall make all surveys, estimates and calculations necessary to be made for the establishment of a sewerage system, and of the cost of labor and materials therefor; *Provided*, the mayor and council may, when they deem it expedient, employ a special engineer to make or assist in making any estimate or survey herein provided for, and any estimate or survey made by such special engineer shall have the same validity, and serve in all respects as though made by the city engineer. Before the city council shall make any contract for building any such sewers or any part thereof, an estimate of the cost thereof shall be made by the city engineer, or by a special engineer as above, and submitted to the council, and no contract shall be entered into for the building of any such sewers or any part thereof for a price exceeding such estimate. In advertising for bids for any such work or materials, the council shall cause the amount of such estimate to be published therewith. Such advertisement shall be for at least twenty days in some newspaper published in the city.

Source: Laws 1903, c. 22, § 2, p. 255; R.S.1913, § 5044; C.S.1922, § 4213; C.S.1929, § 17-152.

17-151 Sewerage system; establishment; borrowing money; conditions precedent.

Before submitting any proposition for borrowing money for the purposes mentioned in section 17-150, the mayor and council shall determine upon a system of sewerage and shall procure from the city engineer an estimate of the

actual cost of such system and of the cost of so much thereof as the mayor and council may propose to construct, with the amount proposed to be borrowed and the plans of such system. Such estimate shall be placed and remain in the hands of the city clerk, subject to public inspection during all the time such proposition to borrow money shall be pending. After such system shall have been adopted, no change shall be made therein involving an expense of more than one thousand dollars, nor shall any system be adopted in lieu thereof, unless authorized by a vote of the people.

Source: Laws 1903, c. 22, § 4, p. 256; R.S.1913, § 5045; C.S.1922, § 4214; C.S.1929, § 17-153.

17-152 Repealed. Laws 1983, LB 421, § 18.

17-153 Sewerage system; bonds; sinking funds; investment.

All taxes levied for the purpose of raising money to pay the interest or to create a sinking fund for the payment of the bonds provided for in section 17-925, shall be payable in money only; and, except as herein otherwise provided, no money so obtained shall be used for any other purpose than the payment of the interest or debt for the payment of which they shall have been raised; *Provided,* such sinking fund may, under the direction of the mayor and council, be invested in any of the underdue bonds issued by such city; *Provided,* they can be procured by the treasurer at such rate of premium as shall be prescribed by ordinance. Any due or overdue bond or coupon shall be a sufficient warrant or order for the payment of the same by the treasurer, out of any fund specially created for that purpose, without any further order or allowance by the mayor and council.

Source: Laws 1903, c. 22, § 8, p. 258; R.S.1913, § 5047; C.S.1922, § 4216; C.S.1929, § 17-155.

17-154 Sewers; right-of-way; condemnation; procedure.

In case of the refusal of the owner or owners or claimant or claimants of any lands or any right-of-way, or any easement in any lands through which cities of the second class propose to construct any sewer or drain or any outlet for any sewer or drain, to allow the passage thereof, the city proposing to construct such sewer or drain, and desiring the right-of-way may proceed to acquire same by the exercise of the power of eminent domain. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1905, c. 28, § 1, p. 253; R.S.1913, § 5049; C.S.1922, § 4218; C.S.1929, § 17-157; R.S.1943, § 17-154; Laws 1951, c. 101, § 55, p. 472.

17-155 Board of equalization; counties under township organization; members; meetings.

In all cities of the second class in counties under township organization, the city council and supervisors of such cities shall constitute a board of equalization for such city, whose duty it shall be to meet and equalize the assessments

of such city at the same time and in the same manner as now provided by law for townships in counties under township organization.

Source: Laws 1889, c. 76, § 1, p. 537; R.S.1913, § 5050; C.S.1922, § 4219; C.S.1929, § 17-158.

17-156 Joint city and school district facility; acquisition of land; erection, equipment, furnishings, and maintenance.

Any school district in this state which has within its boundaries, or is contiguous to, a city of the second class may, together with such city, jointly acquire land for, erect, equip, furnish, maintain, and operate a joint municipal and recreation building or joint recreational and athletic field to be used jointly by such school district and city.

Source: Laws 1953, c. 37, § 1, p. 128; Laws 1955, c. 39, § 1, p. 152; Laws 1961, c. 47, § 1, p. 184.

17-157 Joint city and school district facility; expense; bonds; election; approval by electors.

The cost and expense of acquiring land for, erecting, equipping, furnishing, and maintaining a joint municipal and recreation building or joint recreational and athletic field shall be borne by such school district and city in the proportion determined by the board of education of the school district and the city council of the city of the second class. The building shall not be erected or contracted to be erected, no land shall be acquired therefor, and no bonds shall be issued or sold by the school district or the city of the second class until the school district and the city of the second class have each been authorized to issue bonds to defray its proportion of the cost of such land, building, equipment, and furnishings by the required number of electors of the school district and the city of the second class in the manner provided by sections 10-702 to 10-716 and 17-954; *Provided*, when funds and property are available for such purpose, land may be acquired, buildings erected, or equipment and furnishings supplied by a joint resolution of the school district and the city of the second class without a vote of the people.

Source: Laws 1953, c. 37, § 2, p. 128; Laws 1955, c. 39, § 2, p. 152.

17-158 Joint city and school district facility; indebtedness; bonds; principal and interest; in addition to other limitations.

The amount of indebtedness, authorized to be incurred by any school district or city of the second class for the payment of principal and interest for the bonds authorized by the provisions of sections 17-156 to 17-162, shall be in addition to and over and above any limits now fixed by law.

Source: Laws 1953, c. 37, § 3, p. 128.

17-159 Joint city and school district facility; city council and board of education; building commission; powers; duties.

The members of the board of education of the school district and the city council of the city of the second class, which board and council have agreed to build a joint municipal and recreation building or joint recreational and athletic field, shall be the building commission to purchase the land for the building and to contract for the erection, equipment, and furnishings of the

building or the recreational and athletic field. After the completion thereof, such building commission shall be in charge of the maintenance and repair thereof.

Source: Laws 1953, c. 37, § 4, p. 129; Laws 1955, c. 39, § 3, p. 153.

17-160 Joint city and school district facility; building commission; plans and specifications; personnel; compensation; contracts.

The building commission shall cause to be prepared building plans and specifications for the joint building or joint recreational and athletic field. It may employ architects, engineers, draftsmen, and such clerical help as may be deemed necessary for the purpose of preparing such plans and specifications. The compensation of such personnel shall be fixed by the commission and shall be paid in the same proportion as determined for defraying the cost thereof, as provided for in section 17-157. The contract for erecting the building, for the equipment, and for furnishings shall be let by the commission in the same manner as for other public buildings. The members of the commission shall receive no compensation for their services as members of the commission.

Source: Laws 1953, c. 37, § 5, p. 129; Laws 1955, c. 39, § 4, p. 153.

17-161 Joint city and school district facility; annual budget of city and school district.

The school district and the city of the second class shall each provide in their annual budgets an item for their proportion of the expense of maintaining such joint municipal and recreation building or joint recreational and athletic field.

Source: Laws 1953, c. 37, § 6, p. 129; Laws 1955, c. 39, § 5, p. 154.

17-162 Joint city and school district facility; building commission; accept gifts.

The building commission shall have power to accept gifts, devises, and bequests of real and personal property to carry out the purposes of sections 17-156 to 17-162 and, to the extent of the powers conferred upon such board by the provisions of sections 17-156 to 17-162, to execute and carry out such conditions as may be annexed to any such gifts, devises, or bequests.

Source: Laws 1953, c. 37, § 7, p. 129.

17-163 Offstreet parking; declaration of purpose.

State recognition is hereby given to the hazard created in the streets of cities of the second class of Nebraska by the great increase in the number of motor vehicles, buses, and trucks. In order to remove or reduce the hazards to life and property and the inconvenience of congested traffic on the streets in such cities in this state, it is hereby deemed necessary and of general benefit to the entire State of Nebraska to provide means for such cities in Nebraska to own offstreet vehicle parking facilities exclusively for the parking of motor vehicles.

Source: Laws 1957, c. 29, § 1, p. 185.

Cross References

For applicability of sections 17-163 to 17-173 to villages, see sections 17-207.01 and 17-207.02.

17-164 Offstreet parking; facilities; acquisition; procedure.

Any city of the second class in Nebraska is hereby authorized to own, purchase, construct, equip, lease, or operate within such city offstreet motor vehicle parking facilities for the use of the general public. The grant of power herein does not include the power to engage, directly or indirectly, in the sale of gasoline, oil, or other merchandise or in the furnishing of any service other than that of parking motor vehicles as provided herein. Any such city shall have the authority to acquire by grant, contract, purchase, or through the condemnation of property, as provided by law for such acquisition, all real or personal property, including a site or sites on which to construct said facilities, necessary or convenient in the carrying out of this grant of power; *Provided*, that before any such city may commence a program to construct, purchase, or acquire by other means a proposed offstreet parking facility or facilities, notice shall be given, by publication once each week for not less than thirty days, inviting application for private ownership and operation of offstreet parking facilities, if no application or applications have been received or, if received, the same have been disapproved by the governing body of such city within ninety days from the first date of publication, then such city may proceed in the exercise of the powers herein granted.

Source: Laws 1957, c. 29, § 2, p. 186.

Note: ''Herein'' refers to sections 17-163 to 17-173.

17-165 Offstreet parking; revenue bonds; issuance; terms.

In order to pay the cost required by any purchase, construction, lease, or condemnation of property and equipping of such facilities, or the enlargement of presently owned facilities, the city may issue revenue bonds to provide the funds for such improvements. Such revenue bonds shall not be payable from any general tax upon the issuing municipality, but shall be a lien only upon the revenue and earnings of the parking facilities. Such revenue bonds shall mature in not to exceed forty years but may be optional prior to maturity at a premium as provided in the authorizing resolution or ordinance. Any such revenue bonds which may be issued shall not be included in computing the maximum amounts of bonds which the issuing city of the second class may be authorized to issue under its charter or any statute of this state. Such revenue bonds may be issued and sold or delivered to the contractor at par and accrued interest for the amount of work performed. If any city has installed or installs onstreet parking meters, it may pledge all or any part of the revenue of such parking meters, not previously pledged, as security for the bonds herein authorized.

Source: Laws 1957, c. 29, § 3, p. 186; Laws 1969, c. 51, § 42, p. 297.

Note: ''Herein'' refers to sections 17-163 to 17-173.

17-166 Offstreet parking; plans and specifications; coordination with traffic control program.

Before the issuance of any revenue bonds the city of the second class shall have an independent and qualified firm of engineers prepare plans and specifications for such improvements. In the preparation of the plans and specifications, the independent engineer shall collaborate and counsel with any city engineering or traffic departments so as to coordinate the program with the program for the control of traffic within such respective city.

Source: Laws 1957, c. 29, § 4, p. 187.

17-167 Offstreet parking; city council; rules and regulations; contracts; rates.

The governing body of any such city of the second class shall make all necessary rules and regulations governing the use, operation, and control thereof. In the exercise of the grant of power herein set forth, the city of the second class may make contracts with other departments of the city, or others, if such contracts are necessary and needed for the payment of the revenue bonds authorized herein and for the successful operation of the parking facilities. The governing board shall also establish and maintain equitable rates or charges for such services sufficient in amount to pay for the cost of operation, repair, and upkeep of the facilities to be purchased, acquired, or leased, and the principal of and interest on any revenue bonds issued pursuant to the provisions of sections 17-163 to 17-173. The governing body may also make any other agreements with the purchasers of the bonds for the security of the issuing city and the purchasers of such bonds not in contravention with the provisions of sections 17-163 to 17-173.

Source: Laws 1957, c. 29, § 5, p. 187.

Note: ''Herein'' refers to sections 17-163 to 17-173.

17-168 Offstreet parking; acquisition of facilities; submission at election; notice.

The mayor and council of a city of the second class adopting the proposition to make such purchase, or to erect such facility or facilities, set forth in section 17-164, before the purchase can be made or facility created, must submit the question to the electors of such city at a general municipal election or at an election duly called for that purpose and such question approved by a majority of the electors voting on it. If the question is submitted at a special election, the vote for the purchase or acquisition of such real estate or the purchase or erection of such facility or facilities shall equal at least a majority of the votes cast at the last preceding general election. Notice of the time and place of the election shall be given by publication in some legal newspaper printed and in general circulation in such city three successive weeks prior thereto.

Source: Laws 1957, c. 29, § 6, p. 188.

17-169 Offstreet parking; facilities; lease; controls retained; business restricted.

On the creation of such motor vehicle parking facility for the use of the general public, the city may, if it desires, lease such facility to one or more operators to provide for the efficient operation of the facility. Such lease shall be let on a competitive basis and no lease shall run for a period in excess of ten years. In granting any lease, the city shall retain such control of the facility as may be necessary to insure that the facility will be properly operated in the public interest and that the prices charged are reasonable. The provisions of sections 17-163 to 17-173 shall not be construed to authorize the city or the lessee of the facility to engage in the sale of any commodity, product, or service, or to engage in any business other than the purposes set forth in section 17-164.

Source: Laws 1957, c. 29, § 7, p. 188.

17-170 Offstreet parking; private parking lot; not subject to eminent domain.

Property now used or hereafter acquired for offstreet motor vehicle parking by a private operator shall not be subject to condemnation.

Source: Laws 1957, c. 29, § 8, p. 188.

17-171 Offstreet parking; rights of bondholders.

The provisions of sections 17-163 to 17-173 and of any ordinance authorizing the issuance of bonds under the provisions of sections 17-163 to 17-173 shall constitute a contract with the holders of such bonds, and any holder of a bond or bonds or any of the coupons of any bond or bonds of such municipality, issued under the provisions of sections 17-163 to 17-173, may either in law or in equity, by suit, action, mandamus, or other proceedings, enforce and compel the performance of all duties required by the provisions of sections 17-163 to 17-173 or by the ordinance authorizing the bonds, including the making and collection of sufficient charges and fees for service and the use thereof, and the application of income and revenue thereof.

Source: Laws 1957, c. 29, § 9, p. 189.

17-172 Offstreet parking; revenue; use.

Any city of the second class is authorized to use any or all of the revenue from onstreet parking meters for the purpose set forth in section 17-164 if such revenue has not been pledged for the payment of revenue bonds authorized herein.

Source: Laws 1957, c. 29, § 10, p. 189.

17-173 Offstreet parking; supplementary powers.

Sections 17-163 to 17-173 are supplementary to existing statutes relating to cities of the second class and confer upon such cities powers not heretofore granted.

Source: Laws 1957, c. 29, § 11, p. 189.

17-174 City of second class; public passenger transportation system; acquire; accept funds; administration; powers.

A city of the second class shall have the power by ordinance to acquire, by the exercise of the power of eminent domain or otherwise, lease, purchase, construct, own, maintain, and operate, or contract for the operation of public passenger transportation systems, excluding railroad systems, including all property and facilities required therefor, within and without the limits of the city, to redeem such property from prior encumbrance in order to protect or preserve the interest of the city therein, to exercise all powers granted by the Constitution and laws of the State of Nebraska including but not limited to receiving and accepting from the government of the United States or any agency thereof, from the State of Nebraska, or any subdivision thereof, and from any person or corporation, donations, devises, gifts, bequests, loans, or grants for or in aid of the acquisition, operation, and maintenance of such public passenger transportation systems, and to administer, hold, use, and apply the same for the purposes for which such donations, devises, gifts, bequests, loans, or grants may have been made, to negotiate with employees and enter into contracts of employment, to employ by contract or otherwise individuals singularly or collectively, to enter into agreements authorized under

the Interlocal Cooperation Act or the Joint Public Agency Act, and to exercise such other and further powers with respect thereto as may be necessary, incident, or appropriate to the powers of such city.

Source: Laws 1975, LB 395, § 2; Laws 1999, LB 87, § 62.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

ARTICLE 2
LAWS APPLICABLE ONLY TO VILLAGES

Section

17-201 Village, defined; incorporation; restriction on territory; condition.

Any town or village containing not less than one hundred nor more than eight hundred inhabitants incorporated as a city, town, or village under the

laws of this state and any city of the second class that has adopted village government as provided by law shall be a village and shall have the rights, powers, and immunities hereinafter granted, and none other, except that all county seat towns shall have the powers and immunities as hereinafter granted. The population of a village shall consist of the people residing within the territorial boundaries of such village and the residents of any territory duly and properly annexed to such village.

Whenever a majority of the taxable inhabitants of any town or village, not incorporated under any laws of this state, shall present a petition to the county board of the county in which the petitioners reside, praying that they may be incorporated as a village and designating the name they wish to assume and the metes and bounds of the proposed village, and such county board or majority of the members thereof shall be satisfied that a majority of the taxable inhabitants of the proposed village have signed such petition and that inhabitants to the number of one hundred or more are actual residents of the territory described in the petition, the board shall declare the proposed village incorporated, enter the order of incorporation upon its records, and designate the metes and bounds thereof. Thereafter the village shall be governed by the provisions of law applicable to the government of villages. The county board shall, at the time of the incorporation of the village, appoint five persons, having the qualifications provided in section 17-203, as trustees, who shall hold their offices and perform all the duties required of them by law until the election and qualification of their successors at the time and in the manner provided in section 17-202, except that the county board shall not declare a proposed village incorporated or enter an order of incorporation if any portion of the territory of such proposed village is within five miles of a Nebraska incorporated village or city of any class.

Source: Laws 1879, § 40, p. 202; Laws 1881, c. 22, § 1, p. 165; Laws 1913, c. 137, § 1, p. 335; R.S.1913, § 5051; C.S.1922, § 4223; C.S.1929, § 17-201; R.S.1943, § 17-201; Laws 1961, c. 48, § 1, p. 188; Laws 1969, c. 91, § 1, p. 454; Laws 1971, LB 62, § 2; Laws 1993, LB 726, § 7.

1. Requirements
2. Incorporation
3. Miscellaneous

1. Requirements

Petitioners must be actual and permanent residents of area embraced in petition to be considered inhabitants. State ex rel. Little v. Board of County Commissioners of Cherry County, 182 Neb. 419, 155 N.W.2d 351 (1967).

To warrant board to incorporate territory into a village, there must be requisite population. Remote territory, or purely agricultural land not connected or not adapted to municipal purposes, may not be included. State ex rel. Pond v. Clark, 75 Neb. 620, 106 N.W. 971 (1906); State ex rel. Loy v. Mote, 48 Neb. 683, 67 N.W. 810 (1896).

An order incorporating a village is void, though the petition therefor is purported to be signed by a majority of the taxable inhabitants, when in fact such signatures were not signed thereon but were fraudulently attached. State ex rel. Summers v. Uridil, 37 Neb. 371, 55 N.W. 1072 (1893).

First general election provided for in this section is the village election. State ex rel. Mayor of David City v. Palmer, 10 Neb. 203, 4 N.W. 965 (1880).

2. Incorporation

The duty imposed upon the county board by this section is ministerial in nature. Little v. Board of County Commissioners of Cherry County, 179 Neb. 655, 140 N.W.2d 1 (1966).

The incorporation of a village by the county board upon petition of a majority of the taxable inhabitants is not an unlawful delegation of legislative power or a taking of property without due process of law. Kriz v. Klingensmith, 176 Neb. 205, 125 N.W.2d 674 (1964).

3. Miscellaneous

The terms of sections 17-201 to 17-228 refer to villages only. Gibson v. Troupe, 96 Neb. 770, 148 N.W. 944 (1914).

By acceptance of powers of taxation and government, cities of second class and villages assume the duties, responsibilities and liabilities flowing therefrom, and there is no substantial difference between such municipalities and municipalities of any other class. Goodrich v. University Place, 80 Neb. 774, 115 N.W. 538 (1908).

The power of including lands within city's boundaries is legislative rather than judicial in character, and owner may not restrain collection of city taxes on the ground there was no

authority to include such land. Sage v. City of Plattsmouth, 48 Neb. 558, 67 N.W. 455 (1896); South Platte Land Co. v. Buffalo County, 15 Neb. 605, 19 N.W. 711 (1884).

This section was not intended to clothe large rural districts with municipal powers, nor to subject such lands to special taxation for municipal purposes. State ex rel. Hammond v. Dimond, 44 Neb. 154, 62 N.W. 498 (1895).

It is the duty of village board to divide the village into wards and call an election for electing officers as a city of the second class when the population is sufficient. State ex rel. Hostetter v. Holden, 19 Neb. 249, 27 N.W. 120 (1886).

17-201.01 Villages; incorporation; presumption of regularity of proceedings.

When a county board shall have entered an order declaring any village of the county as incorporated, it shall be conclusively presumed that said incorporation and all proceedings in connection therewith are valid in all respects notwithstanding some defect or defects may appear on the face of the record, or the absence of any record, unless an action shall be brought within one year from the date of entry of such order of the county board, attacking its validity.

Source: Laws 1961, c. 48, § 2, p. 189.

17-202 Board of trustees; election; terms.

The corporate powers and duties of every village shall be vested in the board of trustees which shall consist of five members. At the first statewide general election held after the incorporation of a village, two trustees shall be elected to serve two years and three trustees shall be elected to serve four years. Thereafter the board members shall be elected as provided in the Election Act. The terms shall begin on the first regular meeting of the board in December following the statewide general election. The terms of board members holding office on April 27, 1995, shall be extended to the first regular meeting of the board in December following the statewide general election. The changes made to this section by Laws 1994, LB 76, and Laws 1995, LB 194, shall not change the staggering of the terms of the board members in villages established prior to January 1, 1995.

Source: Laws 1879, § 41, p. 202; Laws 1899, c. 13, § 1, p. 78; R.S.1913, § 5052; C.S.1922, § 4224; C.S.1929, § 17-202; Laws 1943, c. 26, § 1, p. 120; R.S.1943, § 17-202; Laws 1969, c. 257, § 9, p. 936; Laws 1994, LB 76, § 493; Laws 1995, LB 194, § 3.

Cross References

Board of trustees, election, see section 32-532.
Election Act, see section 32-101.
Vacancies, see sections 32-568 and 32-569.

17-203 Board of trustees; qualifications.

Any person may be a trustee who is a citizen of the United States, resides in the village, and is a registered voter.

Source: Laws 1879, § 42, p. 202; Laws 1899, c. 13, § 1, p. 78; R.S.1913, § 5053; Laws 1915, c. 90, § 1, p. 230; Laws 1921, c. 129, § 1, p. 539; C.S.1922, § 4225; C.S.1929, § 17-203; R.S.1943, § 17-203; Laws 1969, c. 257, § 10, p. 936; Laws 1973, LB 559, § 4; Laws 1994, LB 76, § 494.

17-203.01 Repealed. Laws 1994, LB 76, § 615.

17-204 Board of trustees; oath; meetings.

Every trustee, before entering upon the duties of his or her office, shall take an oath to support the Constitution of the United States and the Constitution of

Nebraska and faithfully and impartially to discharge the duties of his or her office. Every board of trustees appointed by the county board shall meet within twenty days, organize, and appoint the officers required by law. All trustees elected to office shall qualify and meet on the first regular meeting of the board in December thereafter, organize, elect a chairperson of the board, and appoint the officers required by law. The board of trustees shall, by ordinance, fix the time and place of holding its stated meetings and may be convened at any time by the chairperson.

Source: Laws 1879, § 43, p. 203; Laws 1913, c. 216, § 1, p. 646; R.S.1913, § 5054; C.S.1922, § 4226; C.S.1929, § 17-204; R.S. 1943, § 17-204; Laws 1974, LB 897, § 1; Laws 1995, LB 194, § 4.

This section authorized chairman to convene the village board at special meeting for purpose of passing a liquor license. Vogel v. Rawley, 85 Neb. 600, 123 N.W. 1037 (1909).

17-205 Board of trustees; quorum; compulsory attendance.

At all meetings of the board a majority of the trustees shall constitute a quorum to do business. A smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as the board of trustees by ordinance may have previously prescribed.

Source: Laws 1879, § 44, p. 203; R.S.1913, § 5055; C.S.1922, § 4227; C.S.1929, § 17-205.

17-206 Board of trustees; journal; roll calls; public proceedings.

The board of trustees shall keep a journal of their proceedings, and at the desire of any member shall cause the yeas and nays to be taken and entered on the journal on any question or ordinance, and the proceedings shall be public.

Source: Laws 1879, § 45, p. 203; R.S.1913, § 5056; C.S.1922, § 4228; C.S.1929, § 17-206.

17-207 Board of trustees; powers; restrictions.

The board of trustees shall have power to pass ordinances to prevent and remove nuisances; to restrain and prohibit gambling; to provide for licensing and regulating theatrical and other amusements within such village; to prevent the introduction and spread of contagious diseases; to establish and regulate markets; to erect and repair bridges; to erect, repair, and regulate wharves and the rates of wharfage; to regulate the landing of watercraft; to provide for the inspection of building materials to be used or offered for sale in such village; to govern the planting and protection of shade trees in the streets and the building of structures projecting upon or over and adjoining, and all excavations through and under, the sidewalks of such village; and in addition to the special powers herein conferred and granted, to maintain the peace, good government, and welfare of the town or village and its trade, commerce, and manufactories, and to enforce all ordinances by inflicting penalties upon inhabitants or other persons, for the violation thereof, not exceeding five hundred dollars for any one offense, recoverable with costs. Nothing in this section shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conducted in accordance with the Nebraska Bingo Act, the Nebraska Lottery

and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act.

Source: Laws 1879, § 46, p. 203; Laws 1907, c. 15, § 1, p. 123; R.S.1913, § 5057; C.S.1922, § 4229; C.S.1929, § 17-207; R.S.1943, § 17-207; Laws 1986, LB 1027, § 190; Laws 1991, LB 849, § 63; Laws 1993, LB 138, § 65; Laws 1999, LB 128, § 1.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

It is the duty of a municipality to regulate the building of stairways projecting upon, over, or adjoining sidewalks, and it is liable for negligence in performing such duty. Pinches v. Village of Dickens, 127 Neb. 239, 254 N.W. 877 (1934).

Village is liable for services of one superintending the repair and alteration of well or waterworks where the improvement was completed and all other bills therefor paid by village, without question. Launt v. Village of Oakdale, 88 Neb. 320, 129 N.W. 258 (1911).

Villages as well as cities of second class have full power to license, regulate, and prohibit billiard and pool hall within their limits. Cole v. Village of Culbertson, 86 Neb. 160, 125 N.W. 287 (1910).

Village board may grant liquor license at a special meeting after legal notice. Vogel v. Rawley, 85 Neb. 600, 123 N.W. 1037 (1909).

Municipality has no power by ordinance to prohibit the keeping of card tables or power to make it unlawful to permit card playing. In re Sapp, 79 Neb. 781, 113 N.W. 261 (1907).

The running of a bowling alley in connection with a saloon or hotel was declared, under former act, to be a criminal offense. Koepke v. State, 68 Neb. 152, 93 N.W. 1129 (1903).

Village boards have power by ordinance to license and regulate billiard and pool rooms and an ordinance whose main object is to license and regulate the same, is not wholly void because of imposing an occupation tax not clearly expressed in title. Morgan v. State, 64 Neb. 369, 90 N.W. 108 (1902).

Village is subject to liability for defective sidewalk. City of Wahoo v. Reeder, 27 Neb. 770, 43 N.W. 1145 (1889); Village of Orleans v. Perry, 24 Neb. 831, 40 N.W. 417 (1888); Village of Ponca v. Crawford, 23 Neb. 662, 37 N.W. 609 (1888).

17-207.01 Offstreet motor vehicle parking; acquisition; procedure.

Any village in Nebraska is hereby authorized to own, purchase, construct, equip, lease, or operate within such village offstreet motor vehicle parking facilities for the use of the general public. The grant of power herein does not include the power to engage, directly or indirectly, in the sale of gasoline, oil, or other merchandise or in the furnishing of any service other than that of parking motor vehicles as provided herein. Any village shall have the authority to acquire by grant, contract, purchase, or through the condemnation of property, as provided by law for such acquisition, all real or personal property, including a site or sites on which to construct said facilities, necessary or convenient in the carrying out of this grant of power; *Provided*, that before any village may commence a program to construct, purchase, or acquire by other means a proposed offstreet parking facility or facilities, notice shall be given, by publication once each week for not less than thirty days, inviting application for private ownership and operation of offstreet parking facilities. If no application or applications have been received or, if received, the same have been disapproved by the governing body of such village within ninety days from the first date of publication, then such village may proceed in the exercise of the powers herein granted.

Source: Laws 1961, c. 50, § 1, p. 191.

17-207.02 Offstreet motor vehicle parking; acquisition; board of trustees; powers.

The powers granted by section 17-207.01 shall be exercised in the manner and be subject to all the terms, conditions, and limitations provided in sections 17-163 to 17-173.

Source: Laws 1961, c. 50, § 2, p. 192.

17-208 Appointive officers; police officer; removal or disciplinary action; procedure; board of health; members; duties.

(1) The village board of trustees may appoint a village clerk, treasurer, attorney, overseer of the streets, and marshal. The village marshal, or any other police officer, may request a review by the village board of his or her removal or any other disciplinary action taken against him or her. After a hearing, the village board may uphold, reverse, or modify the removal or disciplinary action.

(2) The village board of trustees shall by ordinance adopt rules and regulations governing the removal or discipline of any police officer, including the village marshal. The ordinance shall include a procedure for making application for an appeal, specifications on the period of time within which such application shall be made, and provisions on the manner in which the appeals hearing shall be conducted. Both the police officer and the individual imposing the disciplinary action shall have the right at the hearing to be heard and to present evidence to the village board for its consideration. Not later than thirty days following the adjournment of the meeting at which the hearing was held, the village board shall vote to uphold, reverse, or modify the removal or disciplinary action. The failure of the village board to act within thirty days or the failure of a majority of the elected board members to vote to reverse or modify the removal or disciplinary action shall be construed as a vote to uphold the removal or disciplinary action. The decision of the village board shall be based upon its determination that, under the facts and evidence presented at the hearing, the challenged removal or disciplinary action was necessary for the proper management and the effective operation of the police department in the performance of its duties under the statutes of the State of Nebraska. Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders.

(3) The village board of trustees shall also appoint a board of health consisting of three members: The chairperson of the village board, who shall be chairperson, and two other members. One member shall be a physician or health care provider, if one can be found who is willing to serve. Such physician or health care provider, if appointed, shall be the board's medical advisor. If the village board of trustees has appointed a marshal, the marshal may be appointed to the board and serve as secretary and quarantine officer. A majority of the board of health shall constitute a quorum and shall enact rules and regulations, which shall have the force and effect of law, to safeguard the health of the people of such village and prevent nuisances and unsanitary conditions. The board of health shall enforce the same and provide fines and punishments for violations. The appointees shall hold office for one year unless removed by the chairperson of the village board with the advice and consent of the trustees.

Source: Laws 1879, § 47, p. 204; Laws 1885, c. 18, § 1, p. 158; Laws 1895, c. 15, § 1, p. 110; Laws 1911, c. 20, § 1, p. 137; R.S.1913, § 5058; Laws 1919, c. 165, § 1, p. 369; C.S.1922, § 4230; C.S. 1929, § 17-208; R.S.1943, § 17-208; Laws 1995, LB 346, § 2; Laws 1996, LB 1162, § 2.

Village marshal is appointive officer, and is not an employee within the meaning of the Workmen's Compensation Act. Suverkrubbe v. Village of Fort Calhoun, 127 Neb. 472, 256 N.W. 47 (1934).

17-209 Appointed officers and employees; compensation; fixed by ordinance.

The appointive officials and other employees of the village shall receive such compensation as the chairman and board of trustees shall designate by ordinance; and the annual salary of the chairman and other members of the board of trustees shall be fixed by ordinance.

Source: Laws 1879, § 48, p. 204; Laws 1885, c. 18, § 1, p. 159; R.S.1913, § 5059; C.S.1922, § 4231; C.S.1929, § 17-209; Laws 1935, c. 36, § 4, p. 149; Laws 1937, c. 32, § 1, p. 157; C.S.Supp.,1941, § 17-209; Laws 1943, c. 30, § 3, p. 140; R.S.1943, § 17-209; Laws 1945, c. 26, § 1, p. 137; Laws 1947, c. 31, § 2(1), p. 141; Laws 1949, c. 21, § 2, p. 92; Laws 1961, c. 49, § 1, p. 190; Laws 1969, c. 89, § 2, p. 452.

17-209.01 Repealed. Laws 1949, c. 21, § 4.

17-209.02 Officers and employees; merger of offices; salaries.

The local governing body of a village may by ordinance combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except trustee, with any other elective or appointive office or employment so that one or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time, except that trustees may perform and upon board approval receive compensation for seasonal or emergency work subject to sections 49-14,103.01 to 49-14,103.06. The offices or employments so merged and combined shall always be construed to be separate and the effect of the combination or merger shall be limited to a consolidation of official duties only. The salary or compensation of the officer or employee holding the merged and combined offices or employments or offices and employments shall not be in excess of the maximum amount provided by law for the salary or compensation of the office, offices, employment, or employments so merged and combined. For purposes of this section, volunteer firefighters and ambulance drivers shall not be considered officers.

Source: Laws 1945, c. 25, § 2, p. 135; R.S.Supp.,1945, § 17-209.01; Laws 1972, LB 1032, § 106; Laws 1984, LB 368, § 3; Laws 1984, LB 682, § 8; Laws 1986, LB 548, § 9; Laws 1990, LB 756, § 3.

17-210 Board of trustees; ordinances; publication; chairman pro tempore.

The chairman of the board of trustees shall cause the ordinances of the board to be printed and published for the information of the inhabitants, and cause the same to be carried into effect. In the absence of the chairman of the board from any meeting of the board of trustees, such board shall have power to appoint a chairman pro tempore, who shall exercise and have the powers and perform the same duties as the regular chairman.

Source: Laws 1879, § 49, p. 204; R.S.1913, § 5060; C.S.1922, § 4232; C.S.1929, § 17-210.

17-211 Elections; notice of.

The municipal clerk shall give public notice of the time and place of holding each election, the notice to be given not less than ten nor more than twenty days previous to the election.

Source: Laws 1879, § 50, p. 205; R.S.1913, § 5061; C.S.1922, § 4233; C.S.1929, § 17-211; R.S.1943, § 17-211; Laws 1959, c. 60, § 54, p. 272.

17-212 Elections; officers of election; vacancies; how filled.

If, on any day appointed for holding any election, any of the judges or clerks of election shall fail to attend, the electors present may fill such vacancies from among the qualified electors present.

Source: Laws 1879, § 51, p. 205; R.S.1913, § 5062; C.S.1922, § 4234; C.S.1929, § 17-212.

17-213 Village marshal; powers and duties.

The marshal shall be chief of police, and shall at all times have power to make or order an arrest with proper process, for any offense against the laws of the state or ordinances of the village, and bring the offender to trial before the proper officer, and to arrest without process in all cases where any such offense shall be committed or attempted to be committed in his presence.

Source: Laws 1885, c. 18, § 1, p. 160; R.S.1913, § 5063; C.S.1922, § 4235; C.S.1929, § 17-213; R.S.1943, § 17-213; Laws 1972, LB 1032, § 106.

Cross References

Ticket quota requirements, prohibited, see section 48-235.

Village marshal is not an employee within the meaning of workmen's compensation law. Suverkrubbe v. Village of Fort Calhoun, 127 Neb. 472, 256 N.W. 47 (1934).

17-214 Overseer of streets; power and duties.

The overseer of streets shall, subject to the order of the board of such village, have general charge, direction and control of all works on streets, sidewalks, culverts and bridges of the village, and shall perform such other duties as the board may direct.

Source: Laws 1885, c. 18, § 1, p. 160; R.S.1913, § 5064; C.S.1922, § 4236; C.S.1929, § 17-214.

17-215 Village; dissolution; how effected.

Any village of the State of Nebraska incorporated under the laws of this state shall abolish its incorporation whenever a majority of the registered voters of the village, voting on the question of such abolishment, shall so decide in the manner provided in sections 17-215 to 17-219.03.

Source: Laws 1885, c. 17, § 1, p. 156; R.S.1913, § 5065; C.S.1922, § 4237; C.S.1929, § 17-215; R.S.1943, § 17-215; Laws 1998, LB 1346, § 2.

The power to terminate the corporate existence of a village was granted by ballot to the electors and, when exercised by a majority vote, the existence ceases. State ex rel. Banta v. Greer, 86 Neb. 88, 124 N.W. 905 (1910).

17-215.01 Village; dissolution; county, defined.

For purposes of sections 17-215 to 17-219.03, when reference is made to the county within which the village is located and the village is located in more than one county, county means the county within which the greater portion of the area of the village is located.

Source: Laws 1998, LB 1346, § 1.

17-216 Village; dissolution; petition or resolution; election.

(1) Whenever a petition or petitions for submission of the question of the abolishment of incorporation to the registered voters of any village, signed by not less than one-third of the registered voters of the village, is filed in the office of the county clerk or election commissioner of the county in which such village is situated, the county clerk or election commissioner shall cause such question to be submitted to the registered voters of the village as provided in this section and give notice thereof in the general notice of the election at which the question will be submitted.

(2) Whenever two-thirds of the members of the board of trustees of any village, by resolution following a public hearing, vote to submit the question of the abolishment of the incorporation of the village, the resolution shall be filed in the office of the county clerk or election commissioner of the county in which such village is situated and the county clerk or election commissioner shall cause such question to be submitted to the registered voters of the village as provided in this section and give notice thereof in the general notice of the election at which the question will be submitted.

(3) If a petition or resolution is filed with the county clerk or election commissioner, the county clerk or election commissioner shall cause such question to be submitted to the registered voters of the village at the next primary or general election which is scheduled to be held more than seventy days after the date upon which the petition or resolution is filed. If the petition or resolution calls for a vote on the question at a special election to be called for that purpose, the county clerk or election commissioner shall cause a special election to be called for the purpose of placing the question before the registered voters and the election shall be called not sooner than sixty days nor later than seventy days after the date of the filing of the petition or resolution. If a petition is filed at any time other than within one hundred eighty days prior to a primary or general election and the petition does not call for the question to be considered at a special election, the board of trustees may, by majority vote, call for the county clerk or election commissioner to cause the matter to be placed upon the ballot at a special election on a date certain specified by the board, except that such date shall not be sooner than sixty days after the date upon which the petition was filed.

(4) If the question of abolishment of incorporation is submitted to the voters and such question receives a favorable vote by a majority of those voting on the issue, the governing board of such village shall file with the Secretary of State a certified statement showing the total votes for and against such measure.

Source: Laws 1885, c. 17, § 2, p. 157; R.S.1913, § 5066; C.S.1922, § 4238; C.S.1929, § 17-216; R.S.1943, § 17-216; Laws 1973, LB 559, § 5; Laws 1998, LB 1346, § 3.

17-217 Village; dissolution; election; form of ballot.

The forms of ballot shall be, respectively, For abolishment of incorporation, and Against abolishment of incorporation, and the same shall be printed upon a separate ballot, and shall be counted and canvassed in the same manner as other ballots voted at the election.

Source: Laws 1885, c. 17, § 3, p. 157; R.S.1913, § 5067; C.S.1922, § 4239; C.S.1929, § 17-217; R.S.1943, § 17-217; Laws 1973, LB 559, § 6.

17-218 Village; dissolution; when effective.

(1) If it is decided at such election that incorporation of the village be abolished, then, from and after the effective date of the abolishment of the incorporation as determined by the county board as provided in subsection (2) of this section, the incorporation of the village shall cease and be abolished, and the area formerly encompassed within the boundaries of the village shall thereafter be governed by county commissioners as provided by law for unincorporated areas within the county. Upon such date, the terms of office of all elected and appointed officers and employees of the village shall end.

(2) Within fifty days after the date of the election at which the registered voters of the village approve the abolishment of the village's incorporation, the county board of the county within which the village is located shall, by resolution, specify the month, day, and year upon which the abolishment of the incorporation becomes effective. The effective date shall not be later than (a) six calendar months following the date of the election or (b) if there are liabilities of the village which cannot be retired except by means of a continuing property tax levy by the village, the date such liabilities can be paid, whichever is later. The county clerk shall transmit a copy of the resolution to the Secretary of State.

Source: Laws 1885, c. 17, § 4, p. 157; R.S.1913, § 5068; C.S.1922, § 4240; C.S.1929, § 17-218; R.S.1943, § 17-218; Laws 1998, LB 1346, § 4.

17-219 Village; dissolution; village property, records, and funds; disposition.

Upon the effective date of the abolishment of incorporation, all corporate property and corporate records belonging to the village shall be transferred to the county board of the county in which the village is located. All funds of the village not otherwise disposed of shall be transferred to the county treasurer to be paid out by order of the county board as it sees fit.

Source: Laws 1885, c. 17, § 5, p. 157; R.S.1913, § 5069; C.S.1922, § 4241; C.S.1929, § 17-219; R.S.1943, § 17-219; Laws 1998, LB 1346, § 5.

17-219.01 Village; dissolution; property; sale by county board; when authorized.

Notwithstanding any more general law respecting revenue, the county board in any county in this state in which the incorporation of any village has been abolished according to law shall advertise and sell all corporate property of the village for which the county itself has no use or which remains unsold or undisposed of after the expiration of six months from the effective date of the abolishment of the incorporation of such village as provided by the county board for liquidation of any liabilities of the village. After the effective date of

the abolishment of the incorporation of the village, the county board shall treat all real estate listed and described in the original plat of such village upon which the owner thereof has failed and neglected to pay the taxes thereon as if such taxes were originally levied by the county and, notwithstanding any other provision of law, the taxes shall be deemed to have been levied by the county as of the date of the original levy by the village and due and owing as provided by law to the county.

Source: Laws 1935, c. 158, § 1, p. 581; C.S.Supp.,1941, § 17-227; R.S. 1943, § 17-219.01; R.S.1943, (1987), § 17-226; Laws 1998, LB 1346, § 6.

17-219.02 Village; dissolution; property; sale; notice.

The county treasurer shall, before selling any property under section 17-219.01, give notice of the sale thereof in the same manner as notice is given when lands are sold under execution by the sheriff, and the sale shall likewise be conducted in the same manner as execution sales.

Source: Laws 1935, c. 158, § 2, p. 581; C.S.Supp.,1941, § 17-228; R.S. 1943, § 17-219.02; R.S.1943, (1987), § 17-227; Laws 1998, LB 1346, § 7.

17-219.03 Village; dissolution; board of trustees; county board; duties.

(1) On and after the date of a vote by a majority of the registered voters of a village voting on the question in favor of the abolishment of the incorporation of a village, the board of trustees shall not expend any funds of the village, liquidate any village assets, whether such assets are real or personal property, or otherwise encumber or exercise any authority over the property or funds of the village without the prior approval of the county board of the county within which the village is located.

(2) Within ten days after a vote by a majority of the registered voters of a village voting on the question in favor of the abolishment of the incorporation of a village, the board of trustees shall meet and approve a resolution setting out with particularity all of the assets and liabilities of the village, including a full and complete inventory of all property, real and personal, owned by the village. The resolution shall be transmitted to the county clerk of the county within which the village is located, and the county clerk shall provide copies to the members of the county board.

(3) If the liabilities of the village exceed the value of all the assets of the village, the county board shall, within twenty days after the receipt of the resolution by the county clerk, schedule a joint meeting between the village board of trustees and the county board to review the resolution and discuss how to liquidate the liabilities with the village board of trustees.

(4) Within thirty days after the date upon which the joint meeting is held pursuant to subsection (3) of this section, the county board shall adopt a plan for the liquidation of village assets to retire the liabilities of the village.

Source: Laws 1935, c. 158, § 3, p. 581; C.S.Supp.,1941, § 17-229; R.S. 1943, § 17-219.03; R.S.1943, (1987), § 17-228; Laws 1998, LB 1346, § 8.

17-220 Village situated in more than one county; how organized.

A majority of the taxable inhabitants of any village situated in two or more counties may present a petition to the county board of any county in which any part of such village is situated, praying that they may be incorporated as a village; and such county board shall act upon the petition the same as if the village were situated wholly within the county where the petition shall be presented. If the county board shall declare such village incorporated, the village shall thereafter be governed by the provisions of the statutes of this state applicable to the government of villages. The county clerk of said county shall immediately certify the proceedings relating to the incorporation of such village to the county board of each other county in which any part of said village is situated, and each county board to which the said proceedings shall be certified shall enter such proceedings upon their records.

Source: Laws 1893, c. 9, § 1, p. 138; R.S.1913, § 5069; C.S.1922, § 4242; C.S.1929, § 17-220.

A village situated in one county may annex territory in another county. Barton v. City of Omaha, 180 Neb. 752, 145 N.W.2d 444 (1966).

This section is broad enough to permit a village located upon the border of one county to annex contiguous territory situated in adjacent county, but such village has the burden of proving that the territory annexed will be benefited or that justice and equity require the territory be annexed. Village of Wakefield v. Utecht, 90 Neb. 252, 133 N.W. 240 (1911).

17-221 Repealed. Laws 1994, LB 76, § 615.

17-222 Village situated in more than one county; jails.

Any incorporated village situated in two or more counties may have the right to use the jails of any and all counties in which any part of such village is situated.

Source: Laws 1893, c. 9, § 4, p. 139; R.S.1913, § 5072; C.S.1922, § 4244; C.S.1929, § 17-222.

17-223 Village situated in more than one county; tax; how certified.

Taxes levied for village purposes, in villages situated in two or more counties, shall be certified to the county clerk of each county in which any part of such village is situated, and said county clerks shall place the same on the proper tax list.

Source: Laws 1893, c. 9, § 5, p. 139; R.S.1913, § 5073; C.S.1922, § 4245; C.S.1929, § 17-223.

A tax levy in a village situated in two or more counties shall be certified to the county clerks. Village of Wakefield v. Utecht, 90 Neb. 252, 133 N.W. 240 (1911).

17-224 Village situated in more than one county; legal notices; publication.

All notices and other publications, required by law to be published in any county in which any part of an incorporated village is situated, may be published in any newspaper published in such village, and such publication shall have the same force and effect as it would have if published in every county in which any part of such village is situated.

Source: Laws 1893, c. 9, § 7, p. 140; R.S.1913, § 5074; C.S.1922, § 4246; C.S.1929, § 17-224.

17-225 Railroads; blocking crossings; penalty.

It shall be unlawful for any railroad company or for any of its officers, agents, servants or employees to obstruct with car or cars, engine or engines, or with

any other rolling stock, for more than ten minutes at a time, any public highway, street or alley in any unincorporated town or village in the State of Nebraska. Any corporation, person, firm or individual violating any provision of this section shall, upon conviction thereof, be fined in any sum not less than ten dollars nor more than one hundred dollars.

Source: Laws 1907, c. 109, § 1, p. 384; Laws 1907, c. 109, § 2, p. 384; R.S.1913, § 5075; C.S.1922, § 4247; C.S.1929, § 17-225.

17-226 Transferred to section 17-219.01.

17-227 Transferred to section 17-219.02.

17-228 Transferred to section 17-219.03.

17-229 Street improvement program; authorization; tax levy.

If the board of trustees of a village in the State of Nebraska by a three-fourths vote of the members elected to the board determines by ordinance the necessity of initiating a street improvements program within the village, which improvements are in the nature of a general benefit to the whole community and not of special benefit to adjoining or to abutting property and which consists of graveling, base stabilization, oiling, or other improvements to the streets, but which improvements do not consist of curb and gutter or asphalt or concrete pavings, the chairperson and board of trustees may, by such ordinance, provide for the levy and collection of a special tax not exceeding seventeen and five-tenths cents on each one hundred dollars on the taxable value of all the taxable property in the village for a period of not to exceed five years to create a fund for the payment of such improvements.

Source: Laws 1963, c. 85, § 1, p. 293; Laws 1979, LB 187, § 46; Laws 1992, LB 719A, § 49.

17-230 Street improvement program; tax levy limitation.

Any such levy shall not be considered within the limitation on the village for the levy of taxes as contained in section 17-702.

Source: Laws 1963, c. 85, § 2, p. 293; Laws 1965, c. 69, § 2, p. 290; Laws 1979, LB 187, § 47.

17-231 Street improvement program; construction of improvements; issuance of warrants; interest; unused funds transferred to general fund.

In order to construct the improvements as outlined in section 17-229 pursuant to such determination of necessity, the chairperson and board of trustees may proceed from time to time to make such improvements costing not exceeding eighty-five percent of the amount of taxes to be collected. In order to allow the construction of the contemplated improvements immediately, the chairperson and board of trustees may issue warrants from time to time in the aggregate amount of eighty-five percent of the estimated taxes to be collected over the period of years provided for the levy, the amount of such warrants authorized to be issued to be based upon the amount of revenue to be raised by the tax to be levied and the taxable valuation of the taxable property in the village at the time the determination of necessity is made by ordinance multiplied by the number of years the tax has to run. The warrants shall not bear interest in excess of six percent per annum, may be issued in such

denominations as the chairperson and board of trustees may determine, and shall be paid from the collection of the special tax levy. Any unpaid amount of the levy after the payment of any such warrants in full, including both principal and interest, shall be transferred to the general fund.

Source: Laws 1963, c. 85, § 3, p. 293; Laws 1979, LB 187, § 48; Laws 1992, LB 719A, § 50.

ARTICLE 3

CHANGES IN POPULATION OR CLASS

(a) CITIES OF THE FIRST CLASS

(b) CITIES OF THE SECOND CLASS

(c) VILLAGES

(a) CITIES OF THE FIRST CLASS

17-301 City of the first class; reorganization as city of the second class.

(1) Whenever any city of the first class decreases in population until it has a population of less than five thousand inhabitants but not less than four thousand five hundred inhabitants, as ascertained and officially promulgated by the federal decennial census, the mayor of any such city shall certify such fact to the Secretary of State.

(2) Whenever any city of the first class decreases in population until it has a population of less than four thousand five hundred inhabitants but more than eight hundred inhabitants as ascertained and officially promulgated by the federal decennial census, the mayor of any such city shall certify such fact to the Secretary of State.

(3) Whenever the Secretary of State receives a certification pursuant to subsection (1) of this section from the same city after two consecutive federal decennial censuses, he or she shall declare such city to have become a city of the second class as provided in section 17-305.

(4) Whenever the Secretary of State receives a certification pursuant to subsection (2) of this section, he or she shall declare such city to have become a city of the second class as provided in section 17-305.

(5) Beginning on the date upon which a city becomes a city of the second class pursuant to section 17-305, such city shall be governed by the provisions of the statutes of the State of Nebraska applicable to cities of the second class.

Source: Laws 1933, c. 112, § 1, p. 452; C.S.Supp.,1941, § 17-162; R.S. 1943, § 17-301; Laws 1984, LB 1119, § 3; Laws 2002, LB 729, § 5.

When it is definitely shown that a first-class city has decreased in population to less than five thousand inhabitants, the mayor of the city has a mandatory duty to certify such fact to the Governor. State ex rel. Cashman v. Carmean, 138 Neb. 819, 295 N.W. 801 (1941).

17-302 Government pending reorganization.

The government of a city shall continue, as organized at the date of the declaration of the Secretary of State under section 17-301, until the reorganization of the same under section 17-305.

Source: Laws 1933, c. 112, § 2, p. 453; C.S.Supp.,1941, § 17-163; R.S. 1943, § 17-302; Laws 2002, LB 729, § 6.

Upon decrease in population of a first-class city below five thousand inhabitants, the form of government continues until reorganization as second-class city. State ex rel. Cashman v. Carmean, 138 Neb. 819, 295 N.W. 801 (1941).

17-303 Wards; establish.

The mayor and council shall, within ninety days after the declaration of the Secretary of State under section 17-301, divide the city into not less than two nor more than six wards as may be provided by ordinance of the mayor and city council thereof. Such wards shall contain, as nearly as practicable, an equal area and an equal number of legal voters. Such division and boundaries of such wards, so to be defined by ordinance, shall take effect on the first day of the first succeeding municipal year following the next general city election after such reorganization. Any council member whose term continues, by reason of his or her prior election under the statutes governing cities of the first class, through another year or years beyond the date of the reorganization as a city of the second class shall continue to hold his or her office as council member from the ward in which he or she is a resident as if elected for the same term under the statutes governing cities of the second class.

Source: Laws 1933, c. 112, § 3, p. 453; C.S.Supp.,1941, § 17-164; R.S. 1943, § 17-303; Laws 2002, LB 729, § 7.

This section provides how the number of wards shall be determined after proclamation of change from first-class city to second-class city. State ex rel. Cashman v. Carmean, 138 Neb. 819, 295 N.W. 801 (1941).

17-304 Reorganization; council; members; qualifications.

After the terms of members of the city council in office at the time shall have expired, the council shall consist of not less than four nor more than twelve citizens of said city, who shall be qualified electors under the Constitution and laws of the State of Nebraska.

Source: Laws 1933, c. 112, § 4, p. 454; C.S.Supp.,1941, § 17-165; R.S. 1943, § 17-304; Laws 1973, LB 559, § 7.

This section provides the number and qualification of members of city council after expiration of terms of incumbents, where first-class city becomes second-class city through decrease in population. State ex rel. Cashman v. Carmean, 138 Neb. 819, 295 N.W. 801 (1941).

17-305 Reorganization; existing ordinances; effect; modification.

(1) Upon the expiration of one year after the date of the declaration of the Secretary of State under section 17-301, the city shall be, as of that date, incorporated as a city of the second class. All ordinances, bylaws, acts, regulations, obligations, rules, and proclamations existing and in force in or with respect to any such city at the time of the declaration of the Secretary of State under section 17-301 shall be and remain in full force and effect for a period of one year and may be enacted, altered, or amended during such period in a

manner consistent with the statutes governing cities of the first class, except that any such acts, alterations, or amendments shall not be effective beyond the date upon which the city is incorporated as a city of the second class.

(2) Notwithstanding the provisions of subsection (1) of this section, a city shall amend, repeal, or modify all ordinances, bylaws, acts, regulations, obligations, rules, and proclamations which are existing and in force in or with respect to such city at the time of the declaration of the Secretary of State under section 17-301 and which are inconsistent with the statutes governing cities of the second class in a manner which is in conformance and consistent with the statutes governing cities of the second class to take effect upon the effective date of the city's incorporation as a city of the second class.

Source: Laws 1933, c. 112, § 5, p. 454; C.S.Supp.,1941, § 17-166; R.S. 1943, § 17-305; Laws 1984, LB 1119, § 4; Laws 2002, LB 729, § 8.

Upon decrease in population of first-class city below five thousand inhabitants, the ordinances, rules, and regulations remain in effect. State ex rel. Cashman v. Carmean, 138 Neb. 819, 295 N.W. 801 (1941).

17-305.01 Applicability of sections.

Sections 17-301 to 17-305 apply to cities of the first class whose population has decreased to less than five thousand inhabitants but more than eight hundred inhabitants according to the federal decennial census in the year 2000 and in each subsequent federal decennial census.

Source: Laws 2002, LB 729, § 9.

(b) CITIES OF THE SECOND CLASS

17-306 City of the second class; reorganization as village.

Whenever any city of the second class desires to discontinue its organization as a city and organize as a village, and one-fourth of the legal voters of such city shall petition the city council, the council shall cause to be published, for at least thirty days, a notice stating that the question of adopting village government will be submitted at the next city election, or at a special election announced in such notice. The form of ballot shall be For organization as a village, and Against organization as a village, and at the same election the qualified voters shall vote for five trustees for the village. If a majority of the votes cast are For organization as a village, then such city shall within sixty days after such election become a village and be governed under the provisions of the law relating to a village unless it shall at some future election adopt a city government in the manner provided herein for the adoption of a village government.

Source: Laws 1879, § 53, p. 205; Laws 1909, c. 21, § 1, p. 189; R.S.1913, § 5077; C.S.1922, § 4249; C.S.1929, § 17-301; R.S.1943, § 17-306; Laws 1972, LB 661, § 3.

Whenever a city of second class desires to discontinue its organization and return to a village organization, it may do so. State ex rel. Hostetter v. Holden, 19 Neb. 249, 27 N.W. 120 (1886).

17-307 Transferred to section 17-312.

17-308 Reorganization; transfer of property; how effected.

If village government shall have been adopted as aforesaid, the board of trustees shall, at the expiration of sixty days from said election, enter upon the

duties of their offices; and all books, papers, records, money and property of such city shall be delivered over to the board of trustees; and the authority of the city council and all city officers shall cease from and after the taking effect of village government in such city.

Source: Laws 1879, § 54, p. 206; R.S.1913, § 5078; C.S.1922, § 4250; C.S.1929, § 17-302.

17-309 Reorganization; existing ordinances; effect; debts; taxes.

All ordinances of the city shall remain and be in full force in the village until amended or repealed by the board of trustees, and the board shall provide for the payment of the city indebtedness, and levy necessary taxes therefor as if the same had been incurred by the village.

Source: Laws 1879, § 55, p. 206; R.S.1913, § 5079; C.S.1922, § 4251; C.S.1929, § 17-303.

17-310 Decrease in population; remain city of the second class.

Whenever any city of the second class decreases in population until it has a population of less than eight hundred inhabitants and more than one hundred inhabitants, as ascertained and officially promulgated by the census, enumeration, and return taken by the United States, by the State of Nebraska, or by the authority of the mayor and council of such city, and the mayor and council decide by ordinance to remain a city of the second class, the mayor shall certify such fact to the Secretary of State who, upon the filing of such a certificate, shall by proclamation so declare and shall declare such city to remain a city of the second class. Such city shall continue to be governed by laws of this state applicable to cities of the second class.

Source: Laws 1984, LB 1119, § 5.

(c) VILLAGES

17-311 Village; increase in population; reorganization as city of the second class.

(1) Except as provided in section 17-312, whenever any village increases in population until it has a population of more than eight hundred inhabitants but less than five thousand inhabitants, as ascertained and officially promulgated by the census, enumeration, and return taken by the United States, by the State of Nebraska, or by the authority of the village board of such village, the village board shall certify such fact to the Secretary of State who, upon the filing of such a certificate, shall by proclamation so declare and shall declare such village to have become a city of the second class. Thereafter such city shall be governed by the laws of this state applicable to cities of the second class. The government of such city shall continue as organized at the date of such proclamation until the reorganization as a city of the second class.

(2) If any village becomes a city of the second class, the governing body shall call a special election for the purpose of electing new members of the city's governing body to be held not more than eight months after the proclamation is issued. At the initial election of officers, the names of the candidates receiving the greatest number of votes at the primary election if one is held shall be placed on the general election ballot. One-half or the bare majority of the candidates in each precinct or ward or at-large candidates, as the case may be,

receiving the greatest number of votes at the general election, shall be elected to terms of the longest duration, and those receiving the next greatest number of votes shall be elected to the remaining term or terms. The members of the village board of trustees shall hold office only until the newly elected city officials assume office. All ordinances, bylaws, acts, rules, regulations, obligations, and proclamations existing and in force in or with respect to any village at the time of its incorporation as a city of the second class shall remain in full force and effect after such incorporation as a city of the second class until repealed or modified by such city within one year after the date of the filing of the certificate pursuant to subsection (1) of this section.

Source: Laws 1984, LB 1119, § 6; Laws 1988, LB 796, § 2; Laws 1994, LB 76, § 495.

17-312 Village; retention of village government; petition; election.

(1) Whenever any village attains a population exceeding eight hundred inhabitants and one-fourth of the legal voters but not less than one hundred registered voters of the village petition the board of trustees of such village, the board of trustees shall cause to be published for at least thirty days a notice stating that the question of retaining a village form of government will be submitted at the next regularly scheduled election or at a special election announced in such notice. Thereupon there shall be submitted by the board of trustees at such election the question of retaining a village form of government. Such election shall be conducted in the manner provided for cities of the second class. The form of the ballot at such election shall be For retention of village government and Against retention of village government. If the majority of the votes cast are for retention of village government, then such village shall remain a village and be governed under the provisions of the law relating to villages unless at some future election such village adopts a city government in the manner provided for the adoption of a village government.

(2) If the question is submitted at a special election, such election shall be held not later than October 15 of an odd-numbered year. If the question is rejected, city officials shall be elected at the next regularly scheduled election.

(3) If the question is submitted at a regularly scheduled election, no village trustees shall be elected at such election, but trustees whose terms are to expire following such election shall hold office until either their successors or city officials take office as follows:

(a) If the question is rejected, the village board shall call a special election, to be held not more than eight months after the election at which the question was rejected, for the purpose of electing city officials under the provisions of law relating to cities of the second class. The terms of office for such officials shall be established pursuant to section 17-311. The members of the board of trustees shall hold office only until the newly elected city officials assume office; and

(b) If the question is approved, the village board shall call a special election, to be held not more than eight months after the election at which the question was approved, for the purpose of electing successors to those members of the village board who held office beyond the normal expiration of their terms. Such special election shall be conducted under the provisions of law relating to villages. Persons so elected shall take office as soon after the completion of the

canvass of the votes as is practicable, and their terms of office shall be as if the holdovers had not occurred.

Source: Laws 1909, c. 21, § 1, p. 190; R.S.1913, § 5007; C.S.1922, § 4249; C.S.1929, § 17-301; R.S.1943, § 17-307; Laws 1969, c. 91, § 2, p. 455; Laws 1971, LB 62, § 3; Laws 1972, LB 661, § 4; Laws 1988, LB 796, § 1; C.S.Supp.,1990, § 17-307; Laws 1994, LB 76, § 496.

ARTICLE 4

CHANGE OF BOUNDARY; ADDITIONS

(a) CONSOLIDATION

(a) CONSOLIDATION

17-401 Consolidation; authority.

Any two or more cities of the second class or villages, lying adjacent to each other, may consolidate and become one city or municipal corporation, as the

case may be, and under the name and with all the powers, obligations, and duties of the city or municipal corporation whose name shall be assumed and adopted in the proceedings provided in sections 17-402 and 17-403.

Source: Laws 1879, § 91, p. 228; R.S.1913, § 5082; C.S.1922, § 4254; C.S.1929, § 17-403.

17-402 Consolidation; procedure.

When any city or village shall desire to be annexed to another and contiguous city or village, the city council or trustees of each city or village shall appoint three commissioners to arrange and report to such council or trustees respectively the terms and conditions on which the proposed annexation can be made; and, if the council or trustees of each such city or village approve of the terms and conditions proposed, they shall, by proper ordinance, so declare; and thereupon the council or trustees of each of such cities or villages by ordinance passed at least one month prior to the general annual election therein, may submit the question of such annexation, upon the terms and conditions so proposed, to the electors of their respective cities or villages; and if a majority of the electors of each vote in favor of such annexation the council or trustees of each shall, by proper ordinance, so declare. A certified copy of the whole proceedings of the city or village shall be filed with the clerk of the city or village to which the annexation is made.

Source: Laws 1879, § 92, p. 228; R.S.1913, § 5083; C.S.1922, § 4255; C.S.1929, § 17-404.

17-403 Consolidation; when effective; existing rights and liabilities preserved.

When certified copies of the proceedings for annexation are filed, as contemplated in section 17-402, the annexation shall be deemed complete; and the city or village to which annexation is made shall have the power to pass such ordinances, not inconsistent with law, as will carry into effect the terms of such annexation. Thereafter the city or village annexed shall be governed as part of the city or village to which annexation is made; *Provided,* such annexation shall not affect or impair any rights or liabilities then existing for or against either of such cities or villages, but they may be enforced the same as if no such annexation had taken place.

Source: Laws 1879, § 93, p. 228; R.S.1913, § 5084; C.S.1922, § 4256; C.S.1929, § 17-405.

The vacation by the owner of plat of an addition of a municipality within corporate limits does not ipso facto disconnect said land from the corporation. Kershaw v. Jansen, 49 Neb. 467, 68 N.W. 616 (1896).

17-404 Consolidation; property.

When a city or village is thus annexed to another, the property, both real and personal, the notes, bonds, obligations, accounts, demands, evidences of debt, rights, and choses in action, franchises, books, records, maps, plats, and effects of every nature, of and belonging to the two adjacent cities or municipal corporations so annexed, shall be the property of and belong to the corporation to which it is annexed.

Source: Laws 1879, § 94, p. 229; R.S.1913, § 5085; C.S.1922, § 4257; C.S.1929, § 17-406.

(b) ANNEXATION OF TERRITORY

17-405 Contiguous land; annexation; petition; plat; approval of council; recording; effect.

(1) Whenever the owner or owners and inhabitants, or a majority thereof in numbers or value, of any territory lying contiguous to the corporate limits of any city or village, whether the territory be already in fact subdivided into lots or parcels of ten acres or less or remains unsubdivided, except as provided in section 13-1115, shall desire to annex such territory to any city or village, they shall first cause an accurate plat or map of the territory to be made, showing such territory subdivided into blocks and lots, conforming as nearly as may be to the blocks, lots, and streets of the adjacent city or village. It shall also show the descriptions and numberings, as provided in section 17-415, for platting additions, and conforming thereto as nearly as may be.

(2) Said plat or map shall be prepared under the supervision of the city engineer in cases of annexation to adjacent cities, and under the supervision of a competent surveyor in any case. A copy of said plat or map, certified by said engineer or surveyor, as the case may be, shall be filed in the office of the clerk of the city or village, together with a request in writing, signed by a majority of the property owners and inhabitants in number and value of the territory described in said plat for the annexation of said territory. The city council or board of trustees shall, at the next regular meeting thereof after the filing of such plat and request for annexation, vote upon the question of such annexation, and such vote shall be spread upon the journal of said council or board of trustees. If a majority of all the members of the council or board of trustees vote for such annexation, an ordinance shall be prepared and passed by the council or board declaring the annexation of such territory to the corporate limits of the city or village, and extending the limits thereof accordingly.

(3) An accurate map or plat of such territory certified by the engineer or surveyor, and acknowledged and proved as provided by law in such cases shall at once be filed and recorded in the office of the county clerk or register of deeds and county assessor of the proper county, together with a certified copy of the ordinance declaring such annexation, under the seal of the city or village. Thereupon such annexation of such adjacent territory shall be deemed complete, and the territory included and described in the plat on file in the office of the clerk or register of deeds shall be deemed and held to be a part of said original corporate city or village, and the inhabitants thereof shall thereafter enjoy the privileges and benefits of such annexation, and be subject to the ordinances and regulations of said city or village.

Source: Laws 1879, § 95, p. 229; Laws 1881, c. 23, § 10, p. 188; R.S.1913, § 5086; C.S.1922, § 4253; C.S.1929, § 17-407; R.S. 1943, § 17-405; Laws 1957, c. 51, § 11, p. 243; Laws 1965, c. 64, § 1, p. 281; Laws 1974, LB 757, § 4.

This section refers to voluntary annexation by resolution upon request of owners and inhabitants, but not to annexation by ordinance. Holden v. City of Tecumseh, 188 Neb. 117, 195 N.W.2d 225 (1972).

Village cannot annex territory not contiguous to it. Village of Niobrara v. Tichy, 158 Neb. 517, 63 N.W.2d 867 (1954).

Land annexed under section 17-407 is not exempt from taxation for prior city indebtedness because of this section. Gottschalk v. Becher, 32 Neb. 653, 49 N.W. 715 (1891).

17-405.01 Annexation; powers; restrictions.

(1) Except as provided in subsection (2) of this section, the mayor and council of any city of the second class or the chairperson and members of the board of

trustees of any village may by ordinance, except as provided in sections 13-1111 to 13-1118, at any time, include within the corporate limits of such city or village any contiguous or adjacent lands, lots, tracts, streets, or highways as are urban or suburban in character, and in such direction as may be deemed proper. Such grant of power shall not be construed as conferring power to extend the limits of any municipality over any agricultural lands which are rural in character.

(2) The mayor and city council of any city of the second class or the chairperson and members of the board of trustees of any village may, by ordinance, annex any lands, lots, tracts, streets, or highways which constitute a redevelopment project area so designated by the city or village or its community redevelopment authority in accordance with the provisions of the Community Development Law and sections 18-2145 to 18-2154 when such annexation is for the purpose of implementing a lawfully adopted redevelopment plan containing a provision dividing ad valorem taxes as provided in subsection (1) of section 18-2147 and which will involve the construction or development of an agricultural processing facility, notwithstanding that such lands, lots, tracts, streets, or highways are not contiguous or adjacent or are not urban or suburban in character. Such annexation shall comply with all other provisions of law relating to annexation generally for cities of the second class and villages. The city or village shall not, in consequence of the annexation under this subsection of any noncontiguous land, exercise the authority granted to it by statute to extend its jurisdiction beyond its corporate boundaries for purposes of planning, zoning, or subdivision development without the agreement of any other city, village, or county currently exercising such jurisdiction over the area surrounding the annexed redevelopment project area. The annexation of any noncontiguous land undertaken pursuant to this subsection shall not result in any change in the service area of any electric utility without the express agreement of the electric utility serving the annexed noncontiguous area at the time of annexation, except that at such time following the annexation of the noncontiguous area as the city or village lawfully annexes sufficient intervening territory so as to directly connect the noncontiguous area to the main body of the city or village, such noncontiguous area shall, solely for the purposes of section 70-1008, be treated as if it had been annexed by the city or village on the date upon which the connecting intervening territory had been formally annexed.

(3) For the purposes of subsection (2) of this section, agricultural processing facility means a plant or establishment where value is added to agricultural commodities through processing, fabrication, or other means and where eighty percent or more of the direct sales from the facility are to other than the ultimate consumer of the processed commodities. A facility shall not qualify as an agricultural processing facility unless its construction or development involves the investment of more than one million dollars derived from nongovernmental sources.

Source: Laws 1967, c. 74, § 1, p. 240; Laws 1997, LB 875, § 1.

Cross References

Community Development Law, see section 18-2101.

Agricultural lands which are urban or suburban in character are subject to annexation hereunder and there is no provision which prevents consideration thereof at a special meeting. Holden v. City of Tecumseh, 188 Neb. 117, 195 N.W.2d 225 (1972).

17-405.02 Contiguous land, defined.

Lands, lots, tracts, streets, or highways shall be deemed contiguous although a stream, roadway, embankment, strip, or parcel of land not more than five hundred feet wide lies between the same and the corporate limits.

Source: Laws 1967, c. 74, § 2, p. 241; Laws 1971, LB 890, § 1.

17-405.03 Use regulations; effect of annexation.

Any extraterritorial property use regulations imposed upon any annexed lands by the municipality before such annexation shall continue in full force and effect until otherwise changed.

Source: Laws 1967, c. 74, § 3, p. 241.

17-405.04 Inhabitants of annexed land; benefits; ordinances.

The inhabitants of territories annexed under the provisions of sections 17-405.01 to 17-405.05 shall receive substantially the benefits of other inhabitants of such municipality as soon as practicable, and adequate plans and necessary city council or village board action to furnish such benefits as police, fire, snow removal, and water service must be adopted not later than one year after the date of annexation, and such inhabitants shall be subject to the ordinances and regulations of such municipality; *Provided,* that such one-year period shall be tolled pending final court decision in any court action to contest such annexation.

Source: Laws 1967, c. 74, § 4, p. 241.

17-405.05 City or village in two or more counties; annexation by city or village; procedure.

When any city or village situated in two or more counties shall desire to annex to its corporate limits any contiguous territory, whether within the counties within which said city or village is situated or otherwise, such territory may be annexed in the manner provided by sections 17-405.01 to 17-405.04.

Source: Laws 1903, c. 23, § 2, p. 259; R.S.1913, § 5089; C.S.1922, § 4262; C.S.1929, § 17-411; R.S.1943, § 17-413; Laws 1967, c. 74, § 5, p. 241; R.S.1943, (1987), § 17-413.

A village located upon the border of one county may annex contiguous territory situated in an adjacent county, though such village has the burden of proving that the territory annexed will be benefited or that justice and equity require that the territory be annexed. Village of Wakefield v. Utecht, 90 Neb. 252, 133 N.W. 240 (1911).

17-406 City or village in two or more counties; annexation; petition of owners; procedure.

Whenever the owner, owners, and inhabitants or a majority thereof in number or value of any territory lying contiguous to the corporate limits of any city or village, the corporate limits of which city or village is situated in two or more counties and, whether the territory shall be situated within or without the counties of which said city or village is a part, except as provided in section 13-1115, shall desire to annex said territory to such city or village, such territory may be annexed in the manner provided in section 17-405, and when so annexed shall thereafter be a part of such city or village.

Source: Laws 1903, c. 23, § 1, p. 259; R.S.1913, § 5087; C.S.1922, § 4259; C.S.1929, § 17-408; R.S.1943, § 17-406; Laws 1957, c. 51, § 12, p. 245.

17-407 Repealed. Laws 1967, c. 74, § 6.

17-408 Repealed. Laws 1967, c. 74, § 6.

17-409 Repealed. Laws 1967, c. 74, § 6.

17-410 Repealed. Laws 1967, c. 74, § 6.

17-411 Repealed. Laws 1967, c. 74, § 6.

17-412 State-owned land; effect of annexation.

The extension of the city limits beyond or around any lands belonging to the State of Nebraska shall not affect the status of such state land.

Source: Laws 1917, c. 101, § 2, p. 267; C.S.1922, § 4261; C.S.1929, § 17-410.

17-413 Transferred to section 17-405.05.

(c) DETACHMENT OF TERRITORY WITHIN CITY LIMITS

17-414 Land within corporate limits; disconnection; procedure.

Whenever a majority of the legal voters residing on any territory within and adjacent to the corporate limits of any city or village or the owner or owners of any unoccupied territory so situated desire to have the territory disconnected from the city or village, they may file a petition in the district court of the county in which such city or village is situated praying that such territory be detached. The petitioners shall, within ten days after the filing of such petition, cause a copy thereof to be served on such city or village in the manner provided by law for the service of summons in a civil action. If any city or village by a majority vote of all members of the council or board of trustees consents that such territory be disconnected, the court shall enter a decree disconnecting the territory, and in such case no costs shall be taxed against such city or village. In case such a city or village desires to contest such petition, it shall file its answer thereto within thirty days after the service of a copy of the petition, and thereupon issue shall be joined and the cause shall be tried by the court as a suit in equity. If the court finds in favor of the petitioners and that justice and equity require that such territory, or any part thereof, be disconnected from such city or village, it shall enter a decree accordingly. In all cases such a decree disconnecting part or all of such territory shall particularly describe the territory affected and a certified copy thereof shall be recorded in the office of the register of deeds or county clerk of the county in which such territory is situated. A certified copy thereof shall also be forwarded to and filed in the office of the clerk of the city or village affected thereby. Either party may prosecute an appeal from the finding and decree of the district court to the Court of Appeals.

Source: Laws 1879, § 101, p. 232; Laws 1881, c. 23, § 12, p. 192; Laws 1901, c. 20, § 1, p. 320; R.S.1913, § 5090; C.S.1922, § 4263; C.S.1929, § 17-412; R.S.1943, § 17-414; Laws 1945, c. 27, § 1, p. 138; Laws 1991, LB 732, § 20.

1. Right of action
2. Procedure
3. Powers of court

4. Effect of disconnection
5. Miscellaneous

1. Right of action

The power, granted herein, to disconnect territory from the city does not extend to cities of the metropolitan class. State ex rel. Andersen v. Leahy, 189 Neb. 92, 199 N.W.2d 713 (1972).

Detachment of property is limited to territory adjacent to the corporate limits. Village of Niobrara v. Tichy, 158 Neb. 517, 63 N.W.2d 867 (1954).

Rural land receiving few, if any, benefits should be detached. Runyan v. Village of Ong, 154 Neb. 127, 47 N.W.2d 97 (1951).

One person, who is the only legal voter residing within the territory, may maintain action to detach. Delozier v. Village of Magnet, 104 Neb. 765, 178 N.W. 619 (1920).

The fact that unplatted lands used exclusively for agricultural purposes were included in corporate limits with owner's tacit permission does not estop him from proceeding in district court to have it disconnected. Joerger v. Bethany Heights, 97 Neb. 675, 151 N.W. 236 (1915); Barber v. Village of Franklin, 77 Neb. 91, 108 N.W. 146 (1906).

Statute of limitations does not run against owner's right of unoccupied lands to have same disconnected from village, and the mere fact that a former owner signed a petition for an election to vote municipal bonds does not estop a present owner from claiming such right. MacGowan v. Village of Gibbon, 94 Neb. 772, 144 N.W. 808 (1913).

Owner of agricultural lands included within boundaries of such municipality, even though not a voter, may maintain an action to have such lands detached. Village of Osmond v. Matteson, 62 Neb. 512, 87 N.W. 311 (1901); Village of Osmond v. Smathers, 62 Neb. 509, 87 N.W. 310 (1901); State ex rel. Hammond v. Dimond, 44 Neb. 154, 62 N.W. 498 (1895).

2. Procedure

Under prior act, proviso referred to conditions existing at time action was brought and not to land once platted where plat was vacated prior to bringing action. Edgecombe v. City of Rulo, 109 Neb. 843, 192 N.W. 499 (1923).

Provisions of this section do not provide the exclusive method for detaching territory from a municipality. Sole v. City of Geneva, 106 Neb. 879, 184 N.W. 900 (1921).

In an action to annex territory, the burden is upon the village to establish that justice and equity require such territory should be annexed, and, in an action to disconnect territory, the burden is upon the petitioner to establish that justice and equity require that such territory should be disconnected. Haney v. Village of Hyannis, 97 Neb. 220, 149 N.W. 405 (1914).

3. Powers of court

A decree under this section is tried de novo in the Supreme Court, under the provisions of section 25-1925, R.R.S.1943. Dugan v. Village of Greeley, 206 Neb. 804, 295 N.W.2d 115 (1980).

Detachment may be denied where it would enhance difficulties of city administration. Swanson v. City of Fairfield, 155 Neb. 682, 53 N.W.2d 90 (1952).

Court of equity is empowered to disconnect agricultural lands having no unity or community of interest with city. Davidson v. City of Ravenna, 153 Neb. 652, 45 N.W.2d 741 (1951).

Where tract of land within city limits had the benefit of adequate fire protection, public utilities, and improved streets adjacent thereto, decree should be entered denying detachment. Lee v. City of Harvard, 146 Neb. 807, 21 N.W.2d 696 (1946).

The judgment of the district court detaching territory will not be impeached upon appeal in absence of a showing that the trial judge committed mistake of fact, or made an erroneous inference of fact or of law. Marsh v. Village of Trenton, 92 Neb. 63, 137 N.W. 981 (1912); Chapin v. Village of College View, 88 Neb. 229, 129 N.W. 297 (1911); McMillan v. Diamond, 77 Neb. 671, 110 N.W. 542 (1906); Gregory v. Village of Franklin, 77 Neb. 62, 108 N.W. 147 (1906); Michaelson v. Village of Tilden, 72 Neb. 744, 101 N.W. 1026 (1904).

In determining whether lands receive material benefit from the city, and also, whether justice and equity require annexation, the court acts judicially, and where unplatted lands within or without the corporate limits have no unity in interest with platted portion of the city, justice and equity dictate that they should be excluded therefrom. Bisenius v. City of Randolph, 82 Neb. 520, 118 N.W. 127 (1908).

4. Effect of disconnection

Under the facts of this case, to detach the land in question would have an adverse effect on the village. Dugan v. Village of Greeley, 206 Neb. 804, 295 N.W.2d 115 (1980).

Disconnection of lands from a city or village requires a consideration of all the facts and circumstances. Shelton Grain & Supply Co. v. Village of Shelton, 178 Neb. 695, 134 N.W.2d 815 (1965).

When statute authorizes change of boundaries and is silent as to apportionment of municipal debts, the territory within new boundaries becomes liable for taxes for all prior debts and the detached territory is forever released from all municipal debts. Hustead v. Village of Phillips, 131 Neb. 303, 267 N.W. 919 (1936).

Where district court decrees that justice and equity do not require detachment of farm lands from corporation and no appeal is taken therefrom, the matter becomes res judicata and binding upon successors in title, unless sufficient new facts are shown that justice and equity require detachment. Keim v. Village of Bloomington, 119 Neb. 474, 229 N.W. 769 (1930).

Vacation of plat by owner of land within the corporate limits of a municipality does not disconnect such land from the corporation. Kershaw v. Jansen, 49 Neb. 467, 68 N.W. 616 (1896).

5. Miscellaneous

Substantial part of territory sought to be detached must be adjacent to a part of the boundary of the municipality. Egan v. Village of Meadow Grove, 159 Neb. 207, 66 N.W.2d 425 (1954).

Adjacent means contiguous or coexistent with. Jones v. City of Chadron, 156 Neb. 150, 55 N.W.2d 495 (1952).

Bondholders have no vested right to have boundaries of the village remain constant. Taxes cannot be levied for village purposes on disconnected property. Hardin v. Pavlat, 130 Neb. 829, 266 N.W. 637 (1936).

This section applies only to villages and cities of the second class. City of Hastings v. Hansen, 44 Neb. 704, 63 N.W. 34 (1895).

(d) PLATTING

17-415 Additions; plat; contents; duty to file.

Every original owner or proprietor of any tract or parcel of land, who shall subdivide the same into two or more parts for the purpose of laying out any city or village or any addition thereto or any part thereof, or suburban lots, shall

cause a plat of such subdivision, with references to known or permanent monuments, to be made, which shall accurately describe all subdivisions of such tract or parcel of land, numbering the same by progressive numbers, and giving the dimensions and length and breadth thereof, and the breadth and courses of all streets and alleys established therein. Descriptions of lots or parcels of land in such subdivisions, according to the number and designation thereof on such plat contained, in conveyances or for the purposes of taxation, shall be deemed good and valid for all purposes. The duty to file for record a plat as provided herein shall attach as a covenant of warranty in all conveyances hereafter made of any part or parcel of such subdivision by the original owners or proprietors against any and all assessments, costs and damages paid, lost or incurred by any grantee or person claiming under him, in consequence of the omission on the part of the owner or proprietors to file such plat.

Source: Laws 1879, § 104, p. 233; R.S.1913, § 5092; C.S.1922, § 4265; C.S.1929, § 17-414; R.S.1943, § 17-415; Laws 1967, c. 75, § 3, p. 243.

When plat of proposed subdivision is prepared, executed, and filed by landowner without any representations by city with regard to disputed easement, it operates as deed of portion of land set apart for public use. Vakoc Constr. Co. v. City of Wayne, 191 Neb. 45, 213 N.W.2d 721 (1974).

Filing of plat is dedication of streets shown thereon. Village of Maxwell v. Booth, 161 Neb. 300, 73 N.W.2d 177 (1955).

Where a plat is filed by the owner and surrounding the lands shown on the plat are continuous boundary lines on which appear the words ''street'', it is equivalent to a deed of the portion so shown as streets in fee simple to the public. City of Schuyler v. Verba, 120 Neb. 729, 235 N.W. 341 (1931).

Dedication deed of lot for street to public must be signed by owner and lienholder without notice is not estopped to deny that he consented to dedication. Morning v. City of Lincoln, 93 Neb. 364, 140 N.W. 638 (1913).

Where land is platted pursuant to this section, the fee simple title to streets and alleys vests in the public, and title is held in trust for the use for which such ways were dedicated. Jaynes v. Omaha Street Ry. Co., 53 Neb. 631, 74 N.W. 67 (1898).

A plat filed with the county clerk and recorded by him becomes an instrument in which the public as well as the proprietor is interested and it should remain in the possession of the county clerk. Lincoln Land Co. v. Ackerman, 24 Neb. 46, 38 N.W. 25 (1888).

Lines actually run and marked on the ground will control over plat in case of variance. Holst v. Streitz, 16 Neb. 249, 20 N.W. 307 (1884).

Where land has been platted, occupied, and taxed for more than twenty-five years, courts will not consider evidence to show that plat was not recorded. Bryant v. Estabrook, 16 Neb. 217, 20 N.W. 245 (1884).

17-416 Additions; plat; acknowledgment; filing.

Every such plat shall contain a statement to the effect that the above or foregoing subdivision of (here insert a correct description of the land or parcel subdivided), as appears on this plat, is made with the free consent and in accordance with the desire of the undersigned owners and proprietors, and shall be duly acknowledged before some officer authorized to take the acknowledgment of deeds. When thus executed and acknowledged, the plat shall be filed for record and recorded in the office of the register of deeds and county assessor of the proper county.

Source: Laws 1879, § 105, p. 234; R.S.1913, § 5093; C.S.1922, § 4266; C.S.1929, § 17-415; R.S.1943, § 17-416; Laws 1974, LB 757, § 5.

When plat of proposed subdivision is prepared, executed, and filed by landowner without any representations by city with regard to disputed easement, it operates as deed of portion of land set apart for public use. Vakoc Constr. Co. v. City of Wayne, 191 Neb. 45, 213 N.W.2d 721 (1974).

Platting is required before county board can establish a village. State ex rel. Schoonover v. Crabill, 136 Neb. 819, 287 N.W. 669 (1939).

If plat is filed and recorded, failure to sign that plat does not make it void. Pillsbury v. Alexander, 40 Neb. 242, 58 N.W. 859 (1894).

17-417 Additions; plat; acknowledgment and recording; effect.

The acknowledgment and recording of such plat is equivalent to a deed in fee simple of such portion of the premises platted as is on such plat set apart for

streets or other public use, or as is thereon dedicated to charitable, religious or educational purposes.

Source: Laws 1879, § 106, p. 234; R.S.1913, § 5094; C.S.1922, § 4267; C.S.1929, § 17-416.

1. Effect
2. Miscellaneous

1. Effect

When plat of proposed subdivision is prepared, executed, and filed by landowner without any representations by city with regard to disputed easement, it operates as deed of portion of land set apart for public use. Vakoc Constr. Co. v. City of Wayne, 191 Neb. 45, 213 N.W.2d 721 (1974).

By dedication of plat, landowners transferred the fee in the street to city. Hammer v. Department of Roads, 175 Neb. 178, 120 N.W.2d 909 (1963).

Title conveyed by plat to streets and alleys is a determinable fee. Dell v. City of Lincoln, 170 Neb. 176, 102 N.W.2d 62 (1960).

City was entitled to share in rentals from oil and gas produced from under its streets and alleys. Belgum v. City of Kimball, 163 Neb. 774, 81 N.W.2d 205 (1957).

Filing of plat is dedication of streets shown thereon. Village of Maxwell v. Booth, 161 Neb. 300, 73 N.W.2d 177 (1955).

Where a plat is filed by the undisputed owner and surrounding the land shown in the plat as continuous boundaries there appear the words ''streets'', it is equivalent to a deed in fee simple conveying that portion of the plat set apart as streets. City of Schuyler v. Verba, 120 Neb. 729, 235 N.W. 341 (1931).

Village's acceptance of plat passes fee title of streets and alleys from original owner to the municipality, and village is entitled to grass and other natural products grown thereon. Carroll v. Village of Elmwood, 88 Neb. 352, 129 N.W. 537 (1911).

Where land is platted, the fee simple title to the streets and alleys vests in city. Krueger v. Jenkins, 59 Neb. 641, 81 N.W. 844 (1900).

Where land is platted, the fee simple title to the streets and alleys vests in the public and said title is held in trust for the use to which it was dedicated. Jaynes v. Omaha Street Ry. Co., 53 Neb. 631, 74 N.W. 67 (1898).

A block designated on a plat as a park in the name of the ''party signing and filing the plat'' is a dedication thereof and does not imply a reservation of the block for private use. Ehmen v. Village of Gothenburg, 50 Neb. 715, 70 N.W. 237 (1897).

The acknowledgment and recording of a plat by owner is equivalent to a deed in fee simple to the public to such portion of premises so platted. Lincoln Land Co. v. Ackerman, 24 Neb. 46, 38 N.W. 25 (1888).

2. Miscellaneous

Where lands are platted pursuant to this section and are vacated by written instrument, such vacation divests all public rights therein and the streets so vacated become the property of owners of the adjoining lots. Hart v. Village of Ainsworth, 89 Neb. 418, 131 N.W. 816 (1911).

Where no plat is signed, acknowledged, certified, or filed and the acts of the owner are relied upon to show a dedication of a street by the owners, the intention must be clearly shown that the owner has abandoned the use to the public. City of Omaha v. Hawver, 49 Neb. 1, 67 N.W. 891 (1896).

Where the question whether a block within a plat designated as a park was dedicated to the public, thereby placing title thereto in a city, is once decided by the highest court of the state, such decision will ordinarily be binding in federal courts. Ehmen v. City of Gothenburg, 200 F. 564 (8th Cir. 1912).

17-418 Additions; streets and alleys.

Streets and alleys laid out in any addition to any city or village shall be continuous with and correspond in direction and width to the streets and alleys of the city or village to which they are in addition.

Source: Laws 1879, § 107, p. 234; R.S.1913, § 5095; C.S.1922, § 4268; C.S.1929, § 17-417.

17-419 Additions; plat; how vacated; approval required.

Any such plat may be vacated after approval of the governing body by the proprietors thereof, at any time before the sale of any lots therein, by a written instrument declaring the same to be vacated. Such written instrument shall be approved by the governing body and shall be duly executed, acknowledged or proved, and recorded in the same office with the plat to be vacated. The execution and recording of such writing shall operate to destroy the force and effect of the recording of the plat so vacated and to divest all public rights in the streets, alleys, commons, and public grounds laid out or described in such plat. In cases when any lots have been sold, the plat may be vacated, as herein provided, by all the owners of lots in such plat joining in the execution of the writing aforesaid.

Source: Laws 1879, § 108, p. 234; R.S.1913, § 5096; C.S.1922, § 4269; C.S.1929, § 17-418; R.S.1943, § 17-419; Laws 1985, LB 51, § 1.

Upon vacation of plat of addition to city of second class, property in streets vacated reverts to adjoining landowner. City of Ord v. Zlomke, 181 Neb. 573, 149 N.W.2d 747 (1967).

Effect of vacation of plat of street is discussed and determined. Dell v. City of Lincoln, 170 Neb. 176, 102 N.W.2d 62 (1960).

Only those property owners whose property abuts on the vacated part of the street need join in the deed of vacation. Village of Hay Springs v. Hay Springs Commercial Co., 131 Neb. 170, 267 N.W. 398 (1936).

17-420 Additions; plats; vacation of part; effect.

Any part of a plat may be vacated under the provisions and subject to the conditions of section 17-419; *Provided*, such vacating does not abridge or destroy any of the rights and privileges of other proprietors in said plat. Nothing contained in this section shall authorize the closing or obstructing of any public highways laid out according to law.

Source: Laws 1879, § 109, p. 235; R.S.1913, § 5097; C.S.1922, § 4270; C.S.1929, § 17-419.

Closing or obstruction of public highway is not authorized on vacation of plat. City of Ord v. Zlomke, 181 Neb. 573, 149 N.W.2d 747 (1967).

Effect of vacation of plat of street is discussed and determined. Dell v. City of Lincoln, 170 Neb. 176, 102 N.W.2d 62 (1960).

After dedication and acceptance of street, private proprietors of adjoining land cannot vacate or change the dedication. Village of Maxwell v. Booth, 161 Neb. 300, 73 N.W.2d 177 (1955).

That part of this section that provides ''nothing contained in this section shall authorize the closing or obstruction of any public highway laid out according to law'', does not apply to nominal streets designated on plats which were never used as public highways. Village of Hay Springs v. Hay Springs Commercial Co., 131 Neb. 170, 267 N.W. 398 (1936).

17-421 Additions; plat; vacation of part; rights of owners.

When any part of a plat shall be vacated as aforesaid, the proprietors of the lots so vacated may enclose the streets, alleys and public grounds adjoining said lots in equal proportions.

Source: Laws 1879, § 110, p. 235; R.S.1913, § 5098; C.S.1922, § 4271; C.S.1929, § 17-420.

Vacated streets are the property of the proprietors of adjoining lots. City of Ord v. Zlomke, 181 Neb. 573, 149 N.W.2d 747 (1967).

Effect of vacation of plat of street is discussed and determined. Dell v. City of Lincoln, 170 Neb. 176, 102 N.W.2d 62 (1960).

Constitutionality of this section stated not to be involved. Village of Hay Springs v. Hay Springs Commercial Co., 131 Neb. 170, 267 N.W. 398 (1936).

17-422 Additions; plat; vacation; recording.

The county clerk in whose office the plats aforesaid are recorded shall write in plain, legible letters across that part of said plat so vacated, the word vacated, and also make a reference on the same to the volume and page in which the said instrument of vacation is recorded.

Source: Laws 1879, § 111, p. 235; R.S.1913, § 5099; C.S.1922, § 4272; C.S.1929, § 17-421.

17-423 Additions; plat; vacation; right of owner to plat.

The owner of any lots in a plat so vacated may cause the same and a proportionate part of adjacent streets and public grounds to be platted and numbered by the county surveyor. When such plat is acknowledged by such owner, and is recorded in the record office of the county, such lots may be conveyed and assessed by the numbers given them on such plat.

Source: Laws 1879, § 112, p. 235; R.S.1913, § 5100; C.S.1922, § 4273; C.S.1929, § 17-422.

17-424 Additions; plat; failure to execute and record; power of county clerk; costs; collection.

Whenever the original owners or proprietors of any subdivision of land as contemplated in sections 17-415 and 17-416, have sold or conveyed any part thereof or invested the public with any rights therein, and have failed and neglected to execute and file for record a plat as provided in said sections, the county clerk shall notify some or all of such owners and proprietors by mail or otherwise, and demand an execution of said plat as provided. If such owners or proprietors, whether notified or not, fail and neglect to execute and file for record said plat, for thirty days after the issuance of such notice, the clerk shall cause the plat of such subdivision to be made, and also any surveying necessary therefor. Such plat shall be signed and acknowledged by the clerk, who shall certify that he executed it by reason of the failure of the owners or proprietors named to do so, and filed for record. When so filed for record, it shall have the same effect for all purposes as if executed, acknowledged and recorded by the owners or proprietors themselves. A correct statement of the costs and expenses of such plat, surveying and recording, verified by oath, shall be by the clerk laid before the first session of the county board, who shall allow the same and order the same to be paid out of the county treasury, and shall at the same time assess the said amount, pro rata, upon all several subdivisions of said tract, lot or parcel so subdivided. Such assessment shall be collected with and in like manner as the general taxes, and shall go to the county general fund; or the board may direct suit to be brought in the name of the county, before any court having jurisdiction, to recover of the original owners or proprietors, or either of them, the cost and expense of procuring and recording such plat.

Source: Laws 1879, § 113, p. 235; R.S.1913, § 5101; C.S.1922, § 4274; C.S.1929, § 17-423.

17-425 Land less than forty acres; ownership in severalty; county clerk may plat.

Whenever any congressional subdivision of land of forty acres or less or any lot or subdivision is owned by two or more persons in severalty, and the description of one or more of the different parts or parcels thereof cannot, in the judgment of the county clerk, be made sufficiently certain and accurate for the purpose of assessment and taxation without noting the metes and bounds of the same, the clerk shall require and cause to be made and recorded a plat of such tract or lot of land with its several subdivisions, in accordance with the provisions of section 17-415; and he shall proceed in such cases according to the provisions of section 17-424; and all the provisions of such section in relation to the plats of cities and villages, and so forth, shall govern as to the tracts and parcels of land in this section referred to.

Source: Laws 1879, § 114, p. 236; R.S.1913, § 5102; C.S.1922, § 4275; C.S.1929, § 17-424.

This section has nothing to do with incorporation of cities and villages and, though a method is provided for vacation of plat hereunder, such act of vacating does not have the effect of disconnecting land from a municipality. Kershaw v. Jansen, 49 Neb. 467, 68 N.W. 616 (1896).

17-426 Additions; lots; sale before platting; penalty.

Any person who shall dispose of, or offer for sale or lease, any lots in any town, or addition to any town or city, until the plat thereof has been duly

acknowledged and recorded as provided in section 17-416, shall forfeit and pay fifty dollars for each lot and part of lot sold or disposed of, leased or offered for sale.

Source: Laws 1879, § 116, p. 237; R.S.1913, § 5104; C.S.1922, § 4277; C.S.1929, § 17-426.

Platting is required before county board can establish a village. State ex rel. Schoonover v. Crabill, 136 Neb. 819, 287 N.W. 669 (1939).

ARTICLE 5

GENERAL GRANT OF POWER

Section

Section
17-570. Abandoned real estate; sale; notice.
17-571. Abandoned real estate; sale; sealed bids; deed.
17-572. Loans to students; conditions.

17-501 Cities of the second class and villages; powers; board of public trust; members; duties.

Cities of the second class and villages shall be bodies corporate and politic, and shall have power (1) to sue and be sued; (2) to contract or be contracted with; (3) to acquire and hold real and personal property within or without the limits of the city or village, for the use of the city or village, convey property, real or personal, and lease, lease with option to buy, or acquire by gift or devise real or personal property; and (4) to receive and safeguard donations in trust and may, by ordinance, supervise and regulate such property and the principal and income constituting the foundation or community trust property in conformity with the instrument or instruments creating such trust. The city council of any city of the second class, or the board of trustees of any village, may elect a board of five members, to be known as a board of public trust, who shall be residents of such city or village and whose duties shall be defined by ordinance and who shall have control and management of such donations in trust, in conformity with such ordinance; except that at the time of the establishment of the board of public trust, one member shall be elected for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, and thereafter one member shall be elected each year for a term of five years. Vacancies in the membership of the board shall be filled in like manner as regular members of the board are elected.

Source: Laws 1879, § 56, p. 206; R.S.1913, § 5080; Laws 1917, c. 100, § 1, p. 264; C.S.1922, § 4252; C.S.1929, § 17-401; Laws 1933, c. 29, § 1, p. 206; Laws 1935, Spec. Sess., c. 10, § 6, p. 75; Laws 1937, c. 30, § 1, p. 153; Laws 1941, c. 25, § 1, p. 120; Laws 1941, c. 130, § 14, p. 498; C.S.Supp.,1941, § 17-401; Laws 1943, c. 34, § 1, p. 152; R.S.1943, § 17-501; Laws 1971, LB 32, § 3; Laws 2005, LB 626, § 3.

Right of city to employ special counsel may be implied from power to sue and be sued. Meeske v. Baumann, 122 Neb. 786, 241 N.W. 550 (1932), 83 A.L.R. 131 (1932).

Village may bring suit in equity to declare a stockyard a public nuisance and to enjoin the same. Village of Kenesaw v. Chicago, B. & Q. R. R. Co., 91 Neb. 619, 136 N.W. 990 (1912).

Power of city of second class to contract is not made dependent upon its having previously provided funds with which to pay for that which it contracts. Slocum v. City of North Platte, 192 F. 252 (8th Cir. 1911).

17-502 Seal; other powers.

Such cities or villages shall have a common seal, which they may change and alter at pleasure, and such other powers as may be conferred by law.

Source: Laws 1879, § 56, p. 207; R.S.1913, § 5080; Laws 1917, c. 100, § 1, p. 264; C.S.1922, § 4252; C.S.1929, § 17-401; Laws 1933, c. 29, § 1, p. 206; Laws 1935, Spec. Sess., c. 10, § 6, p. 75; Laws 1937, c. 30, § 1, p. 153; Laws 1941, c. 25, § 1, p. 120; Laws 1941, c. 130, § 14, p. 498; C.S.Supp.,1941, § 17-401; Laws 1943, c. 34, § 1, p. 153.

17-503 Real property; sale; exception; procedure; remonstrance; procedure; hearing.

(1) Except as provided in section 17-503.01, the power of any city of the second class or village to convey any real property owned by it, including land used for park purposes and public squares, except real property used in the operation of public utilities, shall be exercised by resolution directing the sale at public auction or by sealed bid of such property and the manner and terms thereof, except that such property shall not be sold at public auction or by sealed bid when:

(a) Such property is being sold in compliance with the requirements of federal or state grants or programs;

(b) Such property is being conveyed to another public agency; or

(c) Such property consists of streets and alleys.

(2) The governing body of any such city or village may establish a minimum price for real property at which bidding shall begin or shall serve as a minimum for a sealed bid.

(3) After the passage of the resolution directing the sale, notice of all proposed sales of property described in subsection (1) of this section and the terms thereof shall be published once each week for three consecutive weeks in a legal newspaper published in or of general circulation in such city or village.

(4) If within thirty days after the third publication of the notice a remonstrance against such sale is signed by registered voters of the city or village equal in number to thirty percent of the registered voters of the city or village voting at the last regular municipal election held therein and is filed with the governing body of such city or village, such property shall not then, nor within one year thereafter, be sold. If the date for filing the remonstrance falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the thirty-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day. Upon the receipt of the remonstrance, the governing body of such city or village, with the aid and assistance of the election commissioner or county clerk, shall determine the validity and sufficiency of signatures on the remonstrance. The governing body of such city or village shall deliver the remonstrance to the election commissioner or county clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Upon receipt of the remonstrance, the election commissioner or county clerk shall issue to the governing body a written receipt that the remonstrance is in the custody of the election commissioner or county clerk. The election commissioner or county clerk shall compare the signature of each person signing the remonstrance with the voter registration records to determine if each signer was a registered voter on or before the date on which the remonstrance was filed with the governing body. The election commissioner or county clerk shall also compare the signer's printed name, street and number or voting precinct, and city, village, or post office address with the voter registration records to determine whether the signer was a registered voter. The signature and address shall be presumed to be valid only if the election commissioner or county clerk determines that the printed name, street and number or voting precinct, and city, village, or post office address matches the registration records and that the registration was received on or before the date on which the remonstrance was filed with the governing body. The determinations of the election commissioner or county clerk may be rebutted by any credible evidence which the governing body finds sufficient. The express purpose of the comparison of names and addresses with the voter registration

records, in addition to helping to determine the validity of the remonstrance, the sufficiency of the remonstrance, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the remonstrance process. Upon completion of the comparison of names and addresses with the voter registration records, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the signature page number and line number where the name is found, and if the reason for the invalidity of the signature or address is other than the nonregistration of the signer, the election commissioner or county clerk shall set forth the reason for the invalidity of the signature. If the election commissioner or county clerk determines that a signer has affixed his or her signature more than once to the remonstrance and that only one person is registered by that name, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name of the duplicate signature and shall count only the earliest dated signature. The election commissioner or county clerk shall certify to the governing body the number of valid signatures necessary to constitute a valid remonstrance. The election commissioner or county clerk shall deliver the remonstrance and the certifications to the governing body within forty days after the receipt of the remonstrance from the governing body. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Not more than twenty signatures on one signature page shall be counted.

The governing body shall, within thirty days after the receipt of the remonstrance and certifications from the election commissioner or county clerk, hold a public hearing to review the remonstrance and certifications and receive testimony regarding them. The governing body shall, following the hearing, vote on whether or not the remonstrance is valid and shall uphold the remonstrance if sufficient valid signatures have been received.

(5) Real estate now owned or hereafter owned by a city of the second class or a village may be conveyed without consideration to the State of Nebraska for state armory sites or, if acquired for state armory sites, shall be conveyed strictly in accordance with the conditions of sections 18-1001 to 18-1006.

(6) Following (a) passage of the resolution directing a sale, (b) publishing of the notice of the proposed sale, and (c) passing of the thirty-day right-of-remonstrance period, the property shall then be sold. Such sale shall be confirmed by passage of an ordinance stating the name of the purchaser and terms of the sale.

Source: Laws 1879, § 56, p. 207; R.S.1913, § 5080; Laws 1917, c. 100, § 1, p. 264; C.S.1922, § 4252; C.S.1929, § 17-401; Laws 1933, c. 29, § 1, p. 206; Laws 1935, Spec. Sess., c. 10, § 8, p. 76; Laws 1937, c. 30, § 1, p. 153; Laws 1941, c. 25, § 1, p. 120; Laws 1941, c. 130, § 14, p. 498; C.S.Supp.,1941, § 17-401; Laws 1943, c. 34, § 1, p. 153; R.S.1943, § 17-503; Laws 1957, c. 30, § 1, p. 190; Laws 1957, c. 31, § 1, p. 193; Laws 1971, LB 399, § 1; Laws 1981, LB 33, § 1; Laws 1982, LB 909, § 4; Laws 1988, LB 793, § 5; Laws 1993, LB 59, § 2; Laws 1997, LB 230, § 2; Laws 2003, LB 476, § 1.

Attempted sale of real estate without compliance with this section is void. Oman v. City of Wayne, 149 Neb. 303, 30 N.W.2d 921 (1948).

Question raised but not decided as to validity of conveyance from nominal purchaser at tax sale where city was real owner of title. Taxpayers' League of Wayne County v. Wightman, 139 Neb. 212, 296 N.W. 886 (1941).

17-503.01 Real property less than five thousand dollars; sale; procedure.

Section 17-503 shall not apply to the sale of real property if the authorizing resolution directs the sale of real property, the total fair market value of which is less than five thousand dollars. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three prominent places within the city or village for a period of not less than seven days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale. Confirmation of the sale by passage of an ordinance may be required.

Source: Laws 1982, LB 909, § 5; Laws 1995, LB 197, § 1; Laws 2003, LB 476, § 2.

17-503.02 Personal property; sale; procedure; other conveyance.

(1) The power of any city of the second class or village to convey any personal property owned by it shall be exercised by resolution directing the sale and the manner and terms of the sale. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three prominent places within the city or village for a period of not less than seven days prior to the sale of the property. If the fair market value of the property is greater than five thousand dollars, notice of the sale shall also be published once in a legal newspaper published in or of general circulation in such city or village at least seven days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale.

(2) Personal property may be conveyed notwithstanding the procedure in subsection (1) of this section when (a) such property is being sold in compliance with the requirements of federal or state grants or programs or (b) such property is being conveyed to another public agency.

Source: Laws 2003, LB 476, § 3; Laws 2007, LB28, § 1.

17-504 Corporate name; process; service.

The corporate name of each city of the second class or village shall be the City (or Village) of ....., and all and every process and notice whatever affecting such corporation shall be served in the manner provided for service of a summons in a civil action.

Source: Laws 1879, § 57, p. 207; R.S.1913, § 5081; C.S.1922, § 4253; C.S.1929, § 17-402; R.S.1943, § 17-504; Laws 1983, LB 447, § 6.

Service upon mayor by registered mail in workmen's compensation case was good. Clark v. Village of Hemingford, 147 Neb. 1044, 26 N.W.2d 15 (1947).

The chairman of village board has no authority to waive issuance and service of summons and enter voluntary appearance without the official authority of the board. Anstine v. State, 137 Neb. 148, 288 N.W. 525 (1939).

Service of process upon a municipal corporation is had by service upon the mayor or chairman, and in his absence upon the clerk, and in absence of such officers, by leaving a certified copy at the office of the clerk, which service brings the corporation and not the official into court. Fogg v. Ellis, 61 Neb. 829, 86 N.W. 494 (1901); Chicago, B. & Q. R. R. Co. v. Hitchcock County, 60 Neb. 722, 84 N.W. 97 (1900).

17-505 Ordinances, rules, and regulations; enactment; enforcement.

In addition to their special powers, cities of the second class and villages shall have the power to make all such ordinances, bylaws, rules, regulations,

and resolutions, not inconsistent with the laws of the state, as may be expedient for maintaining the peace, good government, and welfare of the corporation and its trade, commerce, and manufactories, and to enforce all ordinances by inflicting fines or penalties for the breach thereof, not exceeding five hundred dollars for any one offense, recoverable with costs.

Source: Laws 1879, § 69, XII, p. 213; Laws 1881, c. 23, § 8, XII, p. 175; Laws 1885, c. 20, § 1, XII, p. 166; Laws 1887, c. 12, § 1, XII, p. 294; R.S.1913, § 5106; C.S.1922, § 4279; C.S.1929, § 17-428; R.S.1943, § 17-505; Laws 1999, LB 128, § 2.

Municipality may enact ordinance imposing duty on gas company of keeping in repair and maintaining all pipelines. Clough v. North Central Gas Co., 150 Neb. 418, 34 N.W.2d 862 (1948).

Cities of the second class have power to make ordinances that punish operators of motor vehicles on city streets. Gembler v. City of Seward, 136 Neb. 196, 285 N.W. 542 (1939), modified on rehearing 136 Neb. 916, 288 N.W. 545 (1939).

Powers conferred upon villages and cities are not extended to board of health. State v. Temple, 99 Neb. 505, 156 N.W. 1063 (1916).

Payment of occupation tax under prior ordinance would not prevent prosecution for engaging in operation of billiard and pool room under later ordinance requiring a license. McCarter v. City of Lexington, 80 Neb. 714, 115 N.W. 303 (1908).

Municipality may grant the use of its streets to telephone company for its poles and lines, which right is a public use and not a special privilege, and, when company makes expenditures relying on an ordinance granting such use, city authorities cannot subsequently impose additional arbitrary burdens. City of Plattsmouth v. Nebraska Telephone Co., 80 Neb. 460, 114 N.W. 588 (1908).

Ordinance attempting to make it unlawful to keep any card table or permit card playing in any place of business was not authorized by this section. In re Sapp, 79 Neb. 781, 113 N.W. 261 (1907).

Village boards have power by ordinance to license and regulate billiard and pool rooms. Morgan v. State, 64 Neb. 369, 90 N.W. 108 (1902).

Village cannot enforce its ordinances both by fine and imprisonment, nor by imprisonment alone except as a means of enforcing the payment of the fine. Bailey v. State of Nebraska, 30 Neb. 855, 47 N.W. 208 (1890).

17-506 Property tax; amount of levy authorized.

Cities of the second class and villages shall have power to levy taxes for general revenue purposes in any one year not to exceed thirty-five cents on each one hundred dollars upon the taxable value of all the taxable property in such cities and villages. The valuation of such property shall be ascertained from the books or assessment rolls of the county assessor.

Source: Laws 1879, § 69, I, p. 211; Laws 1881, c. 23, § 8, I, p. 172; Laws 1885, c. 20, § 1, I, p. 162; Laws 1887, c. 12, § 1, I, p. 291; R.S.1913, § 5107; Laws 1915, c. 91, § 1, p. 231; Laws 1919, c. 51, § 1, p. 149; C.S.1922, § 4280; C.S.1929, § 17-429; R.S.1943, § 17-506; Laws 1947, c. 32, § 1, p. 142; Laws 1953, c. 287, § 14, p. 938; Laws 1979, LB 187, § 49; Laws 1992, LB 719A, § 51.

After the passage of the appropriation bill, power to contract is determined by the amounts appropriated therein plus amounts on hand of previous levies and previous appropriations. LeBarron v. City of Harvard, 129 Neb. 460, 262 N.W. 26 (1935).

A city can levy taxes for city purposes only on property within the city and the property is taxed when the levy is made. State ex rel. Hinson v. Nickerson, 99 Neb. 517, 156 N.W. 1039 (1916).

A village is authorized to levy taxes to pay a judgment for such construction of a light plant, even though a maximum amount of taxes has been theretofore assessed for payment of bonds and general purposes. Village of Oshkosh v. State of Nebraska ex rel. Fairbanks, Morse & Co., 20 F.2d 621 (8th Cir. 1927).

City can acquire waterworks and levy tax to pay for same, without a prior appropriation therefor, as the power to purchase and levy a tax for such purpose comes within the statutory exception. Slocum v. City of North Platte, 192 F. 252 (8th Cir. 1911).

17-507 Other taxes; power to levy.

Second-class cities and villages shall have power to levy any other tax or special assessment authorized by law.

Source: Laws 1879, § 69, II, p. 211; Laws 1881, c. 23, § 8, II, p. 173; Laws 1885, c. 20, § 1, II, p. 163; Laws 1887, c. 12, § 1, II, p. 291; R.S.1913, § 5108; C.S.1922, § 4281; C.S.1929, § 17-430.

When bonds are lawfully issued, municipality has authority to levy tax for their payment. Talbott v. City of Lyons, 171 Neb. 186, 105 N.W.2d 918 (1960).

Where improvements are made, special assessments may be levied by the council to pay for the same by resolution under terms of this section. Weilage v. City of Crete, 110 Neb. 544, 194 N.W. 437 (1923).

Though municipality can only levy taxes authorized and has no inherent power to levy a tax, the power may be implied from express power given to incur an obligation where the Legislature must have intended to furnish a means of payment. Union Pacific R. R. Co. v. Heuer, 97 Neb. 436, 150 N.W. 259 (1914).

The reducing of a water claim to judgment will not justify special taxes to pay the claim. State ex rel. Young v. Royse, 71 Neb. 1, 98 N.W. 459 (1904); State ex rel. Young v. Royse, 3 Neb. Unof. 262, 91 N.W. 559 (1902).

Under terms of prior act, municipality had authority to levy taxes to pay judgments on all taxable property within its boundaries and this section did not repeal the authority. Dawson County v. Clark, 58 Neb. 756, 79 N.W. 822 (1899).

Municipality is authorized to levy tax to pay judgment, and is not restricted in doing so by limitation on amount of bonds that could be issued to construct light plant. Village of Oshkosh v. State of Nebraska ex rel. Fairbanks, Morse & Co., 20 F.2d 621 (8th Cir. 1927).

This section provides power for cities of second class and villages to raise funds in addition to the general tax levy. Slocum v. City of North Platte, 192 F. 252 (8th Cir. 1911).

17-508 Streets; grading and repair, when; bridges and sewers; construction.

Second-class cities and villages shall have the power to provide for the grading and repair of any street, avenue or alley and the construction of bridges, culverts and sewers. No street, avenue or alley shall be graded unless the same shall be ordered to be done by the affirmative vote of two-thirds of the city council or board of trustees.

Source: Laws 1879, § 69, III, p. 211; Laws 1881, c. 23, § 8, III, p. 173; Laws 1885, c. 20, § 1, III, p. 163; Laws 1887, c. 12, § 1, III, p. 291; Laws 1903, c. 20, § 1, p. 248; R.S.1913, § 5109; Laws 1915, c. 91, § 1, p. 231; C.S.1922, § 4282; C.S.1929, § 17-431; R.S. 1943, § 17-508; Laws 1945, c. 28, § 1, p. 140; Laws 1945, c. 29, § 1, p. 143; Laws 1947, c. 23, § 1(1), p. 143.

Cities of the second class are given the power to provide for the grading and repair of streets and the construction of culverts and sewers. Young v. City of Scribner, 171 Neb. 544, 106 N.W.2d 864 (1960).

Requirement of two-thirds vote is limited to orders for grading of streets. Village of Maxwell v. Booth, 161 Neb. 300, 73 N.W.2d 177 (1955).

Maintenance and repair of streets is a governmental function and the cost thereof must be paid from the general fund of the city. Thomson v. City of Chadron, 145 Neb. 316, 16 N.W.2d 447 (1944).

The making, improving, and repairing of streets relates to city's corporate interests only and it is liable for failure to maintain its streets in a safe condition. Goodrich v. University Place, 80 Neb. 774, 115 N.W. 538 (1908).

Where municipality makes provisions for carrying off surface water by drains, it may not discontinue the same and leave lot owner in worse condition than before it constructed such drains. City of McCook v. McAdams, 76 Neb. 1, 106 N.W. 988 (1906), affirmed on rehearing 76 Neb. 7, 110 N.W. 1005 (1907), vacated on rehearing 76 Neb. 11, 114 N.W. 596 (1908); McAdams v. City of McCook, 71 Neb. 789, 99 N.W. 656 (1904).

17-508.01 Streets; maintenance and repair; contracts with county authorized.

Where a city of the second class or village does not have sufficient funds to purchase equipment to maintain and keep its streets in repair, such city or village may contract with the county in which it is situated to have the county maintain and keep its streets in repair. The cost of such maintenance and repair shall be paid by such city or village to the county.

Source: Laws 1947, c. 33, § 1(2), p. 143.

17-508.02 Streets; grading and repair; bridges and sewers; tax limits.

Cities of the second class and villages shall have power to levy in any one year for such purposes not to exceed ten and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property within the limits of such cities and villages.

Source: Laws 1879, § 69, III, p. 211; Laws 1881, c. 23, § 8, III, p. 173; Laws 1885, c. 20, § 1, III, p. 163; Laws 1887, c. 12, § 1, III, p. 291; Laws 1903, c. 20, § 1, p. 248; R.S.1913, § 5109; Laws 1915,

c. 91, § 1, p. 231; C.S.1922, § 4282; C.S.1929, § 17-431; R.S. 1943, § 17-508; Laws 1945, c. 28, § 1, p. 140; Laws 1945, c. 29, § 1, p. 143; Laws 1947, c. 33, § 1(3), p. 144; Laws 1953, c. 287, § 15, p. 939; Laws 1979, LB 187, § 50; Laws 1992, LB 719A, § 52.

17-509 Streets and malls; power to improve; districts.

The governing body of any city of the second class or village may grade, partially or to an established grade, change grade, curb, recurb, gutter, regutter, pave, gravel, regravel, macadamize, remacadamize, widen or narrow streets or roadways, resurface or relay existing pavement, or otherwise improve any streets, alleys, public grounds, public ways, entirely or partially, and streets which divide the city or village corporate area and the area adjoining the city or village; construct or reconstruct pedestrian walks, plazas, malls, landscaping, outdoor sprinkler systems, fountains, decorative water ponds, lighting systems, and permanent facilities; and construct sidewalks and improve the sidewalk space. These projects may be funded at public cost or by the levy of special assessments on the property especially benefited in proportion to such benefits, except as provided in sections 19-2428 to 19-2431. The governing body may by ordinance create paving, repaving, grading, curbing, recurbing, resurfacing, graveling, or improvement districts, to be consecutively numbered, which may include two or more connecting or intersecting streets, alleys, or public ways, and may include two or more of the improvements in one proceeding. All of the improvements which are to be funded by a levy of special assessment on the property especially benefited shall be ordered as provided in sections 17-510 to 17-512, unless the governing body improves a street which divides the city or village corporate area and the area adjoining the city or village. Whenever the governing body of any city of the second class or village improves any street which divides the city or village corporate area and the area adjoining the city or village, the governing body shall determine the sufficiency of petition as set forth in section 17-510 by the owners of the record title representing more than sixty percent of the front footage of the property directly abutting upon the street to be improved, rather than sixty percent of the resident owners. Whenever the governing body shall deem it necessary to make any of the improvements named in this section on a street which divides the city or village corporate area and the area adjoining the city or village, the governing body shall by ordinance create the improvement district pursuant to section 17-511 and the right of remonstrance shall be limited to owners of record title, rather than resident owners.

Source: Laws 1879, § 69, IV, p. 211; Laws 1881, c. 23, § 8, IV, p. 173; Laws 1885, c. 20, § 1, IV, p. 163; Laws 1887, c. 12, § 7, IV, p. 292; Laws 1903, c. 20, § 1, IV, p. 163; Laws 1909, c. 22, § 1, p. 191; Laws 1911, c. 21, § 1, p. 138; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 232; Laws 1917, c. 102, § 1, p. 267; Laws 1919, c. 50, § 1, p. 144; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 300; Laws 1927, c. 42, § 1, p. 176; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 529; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-509; Laws 1969, c. 92, § 1, p. 456; Laws 1979, LB 136, § 3; Laws 1983, LB 94, § 2; Laws 1995, LB 196, § 2.

1. Power to improve
2. Creation of districts
3. Special assessments
4. Miscellaneous

1. Power to improve

General power to pave streets is conferred upon cities of the second class. Elliott v. City of Auburn, 172 Neb. 1, 108 N.W.2d 328 (1961).

Cities of second class or villages can pave streets only by legally following one of three applicable methods. Manners v. City of Wahoo, 153 Neb. 437, 45 N.W.2d 113 (1950).

A public highway or public way, which a city has power to pave and levy a special assessment to pay the cost thereof, is a public highway within the corporate limits of the city as distinguished from a street, and such highway as is formally or impliedly dedicated to and accepted by the city. City of McCook v. Red Willow County, 133 Neb. 380, 275 N.W. 396 (1937).

Where statute authorizes city to pave streets but contains nothing to contrary, there arises an implication that the city is authorized to enter into contracts for the performance of the work and to pay for same by a general tax levy. Daniels v. City of Gering, 130 Neb. 443, 265 N.W. 416 (1936).

This section does not apply to nor govern the construction of temporary sidewalks or ungraded and unimproved streets. Whitla v. Connor, 114 Neb. 526, 208 N.W. 670 (1926).

City of second class has authority to pave its streets. Rooney v. City of So. Sioux City, 111 Neb. 1, 195 N.W. 474 (1923).

2. Creation of districts

The authority of the city will not be extended to include in the improvement a street not within the city limits and not forming a part or connected with state highway. Dorland v. City of Humboldt, 129 Neb. 477, 262 N.W. 22 (1935); Garver v. City of Humboldt, 120 Neb. 132, 231 N.W. 699 (1930).

Where three-fourths of the members of the council vote for ordinance creating paving district, the municipality is authorized to contract and appropriate money for grading and paving without vote of people. Wookey v. City of Alma, 118 Neb. 158, 223 N.W. 953 (1929).

3. Special assessments

Special assessments are levied on basis of benefits accruing to property and not on basis of cost of improvement immediately in front of property. Chicago & N. W. Ry. Co. v. City of Seward, 166 Neb. 662, 90 N.W.2d 282 (1958).

Legislative power to make special assessments is to be strictly construed. Chicago & N. W. Ry. Co. v. City of Seward, 166 Neb. 123, 88 N.W.2d 175 (1958).

Power to levy special assessments is subject to restrictions prescribed by statute. Chicago, St. P., M. & O. Ry. Co. v. City of Randolph, 163 Neb. 687, 81 N.W.2d 159 (1957).

Taxing authorities may not separate, reapportion, and reassess special assessments after the same have been once legally assessed without objection. Village of Winside v. Brune, 133 Neb. 80, 274 N.W. 212 (1937).

This section does not provide appeal to the district court from acts of the municipal board or council sitting as a board of equalization, but review may be had by error proceedings. Roberts v. City of Mitchell, 131 Neb. 672, 269 N.W. 515 (1936).

Property owner has option under statute to pay assessment in installments as they accrue, with interest, or to pay balance of assessment at any time with interest to date. State ex rel. Todd v. Thomas, 127 Neb. 891, 257 N.W. 265 (1934).

It is mandatory and jurisdictional that one of the three methods stated be followed before such improvement may be lawfully made and, unless such municipality follows one of the methods, the assessments made are void. Musser v. Village of Rushville, 122 Neb. 128, 239 N.W. 642 (1931).

Resolution of necessity is not jurisdictional, nor is the establishment of grade by ordinance required before letting of paving contract. Burrows v. Keebaugh, 120 Neb. 136, 231 N.W. 751 (1930).

A municipality may levy a special assessment on adjacent cemetery property to the extent of the benefits conferred therein by the improvement of a street. Greenwood Cemetery v. City of Wayne, 110 Neb. 300, 193 N.W. 734 (1923).

If board, in levying assessments to pay for sidewalks, does not take the benefits and damages resulting to the property into account and levies the total cost without regards thereto, the tax is void. Schneider v. Plum, 86 Neb. 129, 124 N.W. 1132 (1910).

Estimate of cost by city engineer must be submitted and approved before council can levy special assessment for sidewalk. Moss v. City of Fairbury, 66 Neb. 671, 92 N.W. 721 (1902).

4. Miscellaneous

Where a city issues bonds designated as paving district bonds, and neither the bonds nor the ordinance authorizing them provide that the bonds shall be payable only out of special assessments, the bonds are general obligations of the city which authorize the levy of a general tax to pay the same. Alexander v. Bailey, 108 Neb. 717, 189 N.W. 365 (1922).

17-510 Streets; improvement district; creation by petition; denial; assessments.

Whenever a petition signed by the owners of the record title representing more than sixty percent of the front footage of the property directly abutting upon the street, streets, alley, alleys, public way, or public grounds proposed to be improved, shall be presented and filed with the city clerk or village clerk, petitioning therefor, the governing body shall by ordinance create a paving, graveling, or other improvement district or districts, and shall cause such work to be done or such improvement to be made, and shall contract therefor, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street, streets, alley, or alleys especially benefited thereby in such district in proportion to such benefits, except as provided in sections 19-2428 to 19-2431, to pay the cost of such improvement. The governing body shall have the discretion to deny the formation of the proposed district when the area has not previously been improved with a water system, sewer system, and grading of streets. If the governing body should deny a requested improvement district

formation, it shall state the grounds for such denial in a written letter to interested parties.

Source: Laws 1879, § 69, IV, p. 211; Laws 1881, c. 23, § 8, IV, p. 173; Laws 1885, c. 20, § 1, IV, p. 163; Laws 1887, c. 12, § 1, IV, p. 292; Laws 1903, c. 20, § 1, p. 248; Laws 1909, c. 22, § 1, p. 191; Laws 1911, c. 21, § 1, p. 139; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 232; Laws 1917, c. 102, § 1, p. 268; Laws 1919, c. 50, § 1, p. 145; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 331; Laws 1927, c. 42, § 1, p. 177; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 529; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-510; Laws 1979, LB 176, § 1; Laws 1983, LB 125, § 2; Laws 1983, LB 94, § 3.

Property owner has no constitutional right to notice and hearing upon the formation of the district. Kriz v. Klingensmith, 176 Neb. 205, 125 N.W.2d 674 (1964).

Method is provided for commencing proceedings for paving upon petition of abutting property owners. Elliott v. City of Auburn, 172 Neb. 1, 108 N.W.2d 328 (1961).

All property in improvement district which either abuts on or is adjacent to improvement made is liable for assessments unless exempted. Chicago & N. W. Ry. Co. v. City of Seward, 166 Neb. 662, 90 N.W.2d 282 (1958).

Property abutting on street containing "T" intersections was subject to assessment to extent benefited. Chicago & N. W. Ry. Co. v. City of Seward, 166 Neb. 123, 88 N.W.2d 175 (1958).

Procedure under this section must be initiated by petition of resident owners. Chicago, St. P., M. & O. Ry. Co. v. City of Randolph, 163 Neb. 687, 81 N.W.2d 159 (1957).

Action of governing board to pave may be initiated by petitions signed by sixty percent of the resident owners of abutting property. Manners v. City of Wahoo, 153 Neb. 437, 45 N.W.2d 113 (1950).

Though petition for paving was not signed by three-fifths of the resident owners of the property subject to assessment, the ordinance was valid under statute empowering the city council by the assent of the three-fourths of its members to make the improvement without a petition. City of Superior v. Simpson, 114 Neb. 698, 209 N.W. 505 (1926).

Provision requiring the petition of three-fifths of the resident owners or a three-fourths vote of council or board of trustees does not apply to temporary sidewalks on an unimproved and ungraded street. Gibson v. Troupe, 96 Neb. 770, 148 N.W. 944 (1914).

17-511 Streets; improvement by ordinance; objections; time of filing.

Whenever the governing body deems it necessary to make the improvements in section 17-509 which are to be funded by a levy of special assessment on the property especially benefited, such governing body shall by ordinance create a paving, graveling, or other improvement district and, after the passage, approval, and publication of such ordinance, shall publish notice of the creation of any such district for six days in a legal newspaper of the city or village if it is a daily newspaper or for two consecutive weeks if it is a weekly newspaper. If no legal newspaper is published in the city or village, the publication shall be in a legal newspaper of general circulation in the city or village. If the owners of the record title representing more than fifty percent of the front footage of the property directly abutting on the street or alley to be improved file with the city clerk or the village clerk within twenty days after the first publication of such notice written objections to the creation of such district, such improvement shall not be made as provided in such ordinance, but such ordinance shall be repealed. If objections are not filed against the district in the time and manner prescribed in this section, the governing body shall immediately cause such work to be done or such improvement to be made, shall contract for the work or improvement, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street or alley especially benefited in such district in proportion to such benefits to pay the cost of such improvement.

Source: Laws 1927, c. 42, § 1, p. 177; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 530; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-511; Laws 1979, LB 176, § 2; Laws 1986, LB 960, § 8; Laws 1995, LB 196, § 3.

Separate and distinct method for initiating paving project is provided by this section. Elliott v. City of Auburn, 172 Neb. 1, 108 N.W.2d 328 (1961).

Requirements of this section compared with similar requirements applicable to first-class cities. Danielson v. City of Bellevue, 167 Neb. 809, 95 N.W.2d 57 (1959).

Property abutting on "T" intersection was liable for special assessments. Chicago & N. W. Ry. Co. v. City of Seward, 166 Neb. 662, 90 N.W.2d 282 (1958).

Cost of paving intersections should be assessed upon all the taxable property of city. Chicago & N. W. Ry. Co. v. City of Seward, 166 Neb. 123, 88 N.W.2d 175 (1958).

Creation of paving district must be ordered by ordinance. Chicago, St. P., M. & O. Ry. Co. v. City of Randolph, 163 Neb. 687, 81 N.W.2d 159 (1957).

Constitutionality upheld against claim of failure of lawful classification and violation of due process. Freeman v. City of Neligh, 155 Neb. 651, 53 N.W.2d 67 (1952).

Where paving district is created by ordinance without petition, majority of resident owners of directly abutting property may file objections and prevent such paving. Manners v. City of Wahoo, 153 Neb. 437, 45 N.W.2d 113 (1950).

In case of objection by one joint tenant in which the other joint tenant has not joined, rebuttable presumption arises that the one objecting represents the entire property. Bonner v. City of Imperial, 149 Neb. 721, 32 N.W.2d 267 (1948).

An ordinance specifying a street or part of street to be paved, sufficiently describes a paving district and such street or part of street and abutting property therein constitute the paving district. Chittenden v. Kibler, 100 Neb. 756, 161 N.W. 272 (1917).

17-512 Streets; main thoroughfares; improvement by ordinance; assessments.

The council or board of trustees shall have power by a three-fourths vote of all members of such council or board of trustees to enact an ordinance creating a paving, graveling or other improvement district, and to order such work to be done without petition upon any federal or state highways in the city or village or upon a street or route, designated by the mayor and council or board of trustees as a main thoroughfare, that connects to either a federal or state highway or a county road, and shall contract therefor, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street, alley or alleys, especially benefited thereby in such district in proportion to such benefits, to pay the cost of such improvement.

Source: Laws 1879, § 69, IV, p. 211; Laws 1881, c. 23, § 8, IV, p. 173; Laws 1885, c. 20, § 1, IV, p. 163; Laws 1903, c. 20, § 1, p. 248; Laws 1909, c. 22, § 1, p. 191; Laws 1911, c. 21, § 1, p. 139; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 232; Laws 1917, c. 102, § 1, p. 268; Laws 1919, c. 50, § 1, p. 145; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 331; Laws 1927, c. 42, § 1, p. 178; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 530; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-512; Laws 1972, LB 1320, § 1.

Another method for initiating paving proceedings is provided by this section. Elliott v. City of Auburn, 172 Neb. 1, 108 N.W.2d 328 (1961).

Power is granted to enact an ordinance creating a paving district. Chicago, St. P., M. & O. Ry. Co. v. City of Randolph, 163 Neb. 687, 81 N.W.2d 159 (1957).

Main thoroughfare must connect at both ends with state highway system. Manners v. City of Wahoo, 153 Neb. 437, 45 N.W.2d 113 (1950).

If three-fourths of all the members of council vote for improvement, the filing of the petition for the improvement by three-fourths of the resident owners of the property subject to the assessment is not necessary. Carr v. City of Lexington, 103 Neb. 293, 171 N.W. 920 (1919).

Under terms of former act, petition for improvement was not necessary and, upon a three-fourths vote of all the members of the council assenting to make the improvement, could create a paving district and levy special assessment to pay for the same. Fitzgerald v. Sattler, 102 Neb. 665, 168 N.W. 599 (1918).

17-513 Streets; improvement; petitions and protests; sufficiency; how determined; appeal.

Before proceeding with any such improvement the sufficiency of the protests or petitions or of the existence of the required facts and conditions shall be determined by the city council or board of trustees at a hearing of which notice shall be given to all persons who may become liable for assessments by one publication in each of two successive weeks in a newspaper having general circulation in the city or village. Appeal from the action of the city council or board of trustees may be made to the district court of the county in which the

proposed district is situated. The sufficiency of the protests or petitions referred to in sections 17-510 and 17-511, as to the ownership of the property, shall be determined by the record in the office of the county clerk or register of deeds at the time of the adoption of said ordinance. In determining the sufficiency of the petitions or objections, intersections shall be disregarded, and any lot or ground owned by the city shall not be counted for or against such improvement.

Source: Laws 1927, c. 42, § 1, p. 178; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 530; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-513; Laws 1963, c. 71, § 1, p. 274.

Sufficiency of paving petition is to be determined by record at time of adoption of ordinance. Elliott v. City of Auburn, 172 Neb. 1, 108 N.W.2d 328 (1961).

17-514 Streets; improvement; assessments; certification to county treasurer.

All assessments shall be a lien on the property on which levied from the date of levy, and shall thereupon be certified by direction of the council or board of trustees to the treasurer of such city or village for collection. Except as provided in section 18-1216, such assessment shall be due and payable to such treasurer until the first day of November thereafter, or until the delivery of the tax list for such year to the treasurer of the county in which such city or village may be situated, at and after which time the same shall be due and payable to such county treasurer. The council or board of trustees of such city or village shall, within the time provided by law, cause such assessments, or portion thereof then remaining unpaid, to be certified to the county clerk of the county for entry upon the proper tax lists. If the city or village treasurer collects any assessment or portion thereof so certified while the same shall be payable to the county treasurer, the city or village treasurer shall certify the assessment or portion thereof to the county treasurer at once, and the county treasurer shall correct the record to show such payment.

Source: Laws 1909, c. 21, § 1, p. 191; Laws 1911, c. 21, § 1, p. 139; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 232; Laws 1917, c. 102, § 1, p. 268; Laws 1919, c. 50, § 1, p. 145; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 331; Laws 1927, c. 42, § 1, p. 178; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 531; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-514; Laws 1996, LB 962, § 1.

Special assessments are a lien from date of levy. Belza v. Village of Emerson, 159 Neb. 651, 68 N.W.2d 272 (1955).

Special assessments on real property are a lien inferior to lien of general taxes, and where property is sold at a tax foreclosure to satisfy lien of general taxes, title passes to a purchaser by such sale, free and clear of all special assessment liens. Polenz v. City of Ravenna, 145 Neb. 845, 18 N.W.2d 510 (1945).

17-515 Streets and malls; improvement; assessments; interest; when delinquent; payment in installments.

(1) All such assessments, except for paving, repaving, construction of malls and plazas, and the landscaping and permanent facilities thereof, graveling, or curbing and guttering, shall draw interest until the same become delinquent, at a rate set by the city council or board of trustees from the date of levy, and shall become delinquent on the first day of May subsequent to the date of levy, and shall thereafter draw interest at a rate not exceeding the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature.

(2) Such assessments for paving, repaving, construction of malls and plazas, and the landscaping and permanent facilities thereof, or curbing and guttering shall become delinquent in equal annual installments over such period of years, not to exceed fifteen, as the council or board of trustees may determine at the time of making the levy, the first such equal installment to become delinquent in fifty days after the date of such levy.

(3) As to such assessments for graveling, one-third of the total amount assessed against each lot or parcel of land shall become delinquent in fifty days after the date of such levy; one-third in one year; and one-third in two years.

(4) Each of the installments, referred to in subsections (2) and (3) of this section, except the first, shall draw interest at a rate set by the city council or board of trustees, from the time of the aforesaid levy until the same shall become delinquent; and after the same becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon. Should there be three or more of such installments delinquent and unpaid on the same property, the city council or board of trustees may by resolution declare all future installments on such delinquent property to be due on a fixed future date. All of such installments may be paid at one time on any lot or land within fifty days from the date of the levy without interest and, if so paid, such lot or land shall be exempt from any lien or charge therefor.

Source: Laws 1909, c. 22, § 1, p. 192; Laws 1911, c. 21, § 1, p. 139; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 233; Laws 1917, c. 102, § 1, p. 268; Laws 1919, c. 50, § 1, p. 145; C.S. 1922, § 4283; Laws 1923, c. 135, § 1, p. 331; Laws 1927, c. 42, § 1, p. 178; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 531; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-515; Laws 1953, c. 34, § 1, p. 124; Laws 1959, c. 64, § 3, p. 287; Laws 1965, c. 65, § 1, p. 283; Laws 1969, c. 92, § 2, p. 457; Laws 1969, c. 51, § 43, p. 298; Laws 1976, LB 441, § 2; Laws 1980, LB 933, § 18; Laws 1981, LB 167, § 19.

A taxpayer has the option to pay the installments with interest as they become due or may pay balance thereon with interest before due. State ex rel. Todd v. Thomas, 127 Neb. 891, 257 N.W. 265 (1934).

17-516 Streets and malls; improvement; paving bonds; warrants; interest; terms.

For the purpose of paying the cost of constructing, landscaping, and equipping malls and plazas, paving, repaving, macadamizing or graveling, curbing, guttering, or otherwise improving streets, avenues or alleys in any improvement district, the mayor and council or board of trustees shall have the power and may, by ordinance, cause to be issued bonds of the city or village to be called District Improvement Bonds of District No. ...., payable in not exceeding fifteen years from date, and to bear interest payable annually or semiannually with interest coupons attached or may issue its warrants, as other warrants are issued, to be called District Improvement Warrants of District No. ...., payable in the order of their number, to be issued in such denominations as may be deemed advisable, and to bear interest. When warrants are issued for the payment of such cost, special taxes and assessments shall be levied sufficient to pay such warrants and the interest thereon within three years from the date of issuance.

Source: Laws 1909, c. 22, § 1, p. 192; Laws 1911, c. 21, § 1, p. 140; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 233; Laws 1917, c.

102, § 1, p. 269; Laws 1919, c. 50, § 1, p. 146; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 332; Laws 1927, c. 42, § 1, p. 179; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 532; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-516; Laws 1963, c. 72, § 1, p. 275; Laws 1963, c. 73, § 1, p. 276; Laws 1969, c. 92, § 3, p. 458; Laws 1969, c. 51, § 44, p. 299.

17-517 Repealed. Laws 1963, c. 72, § 2.

17-518 Streets; improvement; sinking fund; investment.

Pending final redemption of warrant or warrants, or bond or bonds for paving, the city or village treasurer is hereby authorized to invest such sinking fund in interest-bearing time certificates of deposit in depositories approved and authorized to receive county money, but in no greater amount in any depository than the same is authorized to receive deposits of county funds; and the interest arising from such certificate of deposit shall be credited to its respective sinking fund as hereinbefore provided.

Source: Laws 1923, c. 135, § 1, p. 332; Laws 1927, c. 42, § 1, p. 180; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 532; C.S.Supp.,1941, § 17-432.

17-519 Streets; improvement; assessments against public lands; payment.

If in any second-class city or village, there shall be any real estate belonging to any county, school district or municipal or other quasi-municipal corporation, adjacent to or abutting upon the street or other public way whereon paving, repaving, graveling or other special improvement has been ordered, it shall be the duty of the board of county commissioners, board of education or other proper officers, to provide for the payment of such special assessments or taxes as may be assessed against the real estate so adjacent or abutting, or within such improvement district belonging to the county, school district or municipal or quasi-municipal corporation. In the event of the neglect or refusal so to do, the city or village may recover the amount of such special taxes or assessments in any proper action, and the judgment thus obtained may be enforced in the usual manner.

Source: Laws 1909, c. 22, § 1, p. 193; Laws 1911, c. 21, § 1, p. 140; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 234; Laws 1917, c. 102, § 1, p. 269; Laws 1919, c. 50, § 1, p. 146; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 333; Laws 1927, c. 42, § 1, p. 180; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 533; C.S.Supp.,1941, § 17-432.

All property in improvement district which either abuts on or is adjacent to improvement made is liable for assessments unless exempted. Chicago & N. W. Ry. Co. v. City of Seward, 166 Neb. 662, 90 N.W.2d 282 (1958).

17-520 Streets; improvement; intersections; property; assessment; Intersection Paving Bonds; warrants; interest; partial payments; final payments.

For all paving and improvements of the intersections and areas formed by the crossing of streets, avenues or alleys, and one-half of the streets adjacent to real estate owned by the United States, the State of Nebraska or the city or village, the assessment shall be made upon all of the taxable property of the city or village; and for the payment of such paving or improvements the mayor and

council or the board of trustees are hereby authorized to issue paving bonds of the city or village, in such denominations as they deem proper to be called Intersection Paving Bonds payable in not to exceed fifteen years from the date of said bonds, and to bear interest payable annually or semiannually. Such bonds shall not be issued until the work is completed and then not in excess of the cost of said improvements. For the purpose of making partial payments as the work progresses in paving, repaving, macadamizing or graveling, curbing and guttering or improvements of streets, avenues, alleys or intersections and areas formed by the crossing of streets, avenues, or alleys, or one-half of the streets adjacent to real estate owned by the United States, the State of Nebraska or the city or village, warrants may be issued by the mayor and council, or the board of trustees, upon certificates of the engineer in charge showing the amount of the work completed and materials necessarily purchased and delivered for the orderly and proper continuation of the project, in a sum not exceeding ninety-five percent of the cost thereof, and upon completion and acceptance of the work issue a final warrant for the balance of the amount due the contractor, which warrants shall be redeemed and paid upon the sale of bonds authorized by law. The city or village shall pay to the contractor interest, at the rate of eight percent per annum on the amounts due on partial and final payments, beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the governing body and running until the date that the warrant is tendered to the contractor. Nothing herein shall be construed as authorizing the mayor and council or board of trustees to pave or gravel any intersections or areas formed by the crossing of streets, avenues or alleys, unless in connection with one or more blocks of street paving or graveling of which the paving or graveling of such intersection or area shall form a part.

Source: Laws 1909, c. 22, § 1, p. 193; Laws 1911, c. 21, § 1, p. 141; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 234; Laws 1917, c. 102, § 1, p. 269; Laws 1919, c. 50, § 1, p. 146; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 333; Laws 1927, c. 42, § 1, p. 180; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 533; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-520; Laws 1965, c. 65, § 2, p. 284; Laws 1969, c. 51, § 45, p. 299; Laws 1975, LB 112, § 2.

Statutory language includes ''T'' intersections. Chicago & N. W. Ry. Co. v. City of Seward, 166 Neb. 123, 88 N.W.2d 175 (1958).

17-521 Streets; improvement; railways; duty to pave between rails.

Any street or other railway company, occupying with any track any street, avenue or alley or portion thereof, which may be ordered paved, repaved, macadamized or graveled, may be charged with the expense of such improvement of said portion of such street, avenue or alley so occupied by it between its tracks, between its rails and for one foot beyond the outer rails; and the cost thereof may be collected and enforced against such company in such manner as may be provided by ordinance; or the mayor and council or board of trustees may by ordinance require such company to pave, repave, macadamize or gravel such portion of such street, avenue or alley occupied by said tracks and for one foot beyond its outside rails.

Source: Laws 1909, c. 22, § 1, p. 194; Laws 1911, c. 21, § 1, p. 141; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 234; Laws 1917, c.

102, § 1, p. 270; Laws 1919, c. 50, § 1, p. 148; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 334; Laws 1927, c. 42, § 1, p. 181; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 534; C.S.Supp.,1941, § 17-432.

17-522 Sidewalks; repair; cost; assessment; notice.

(1) The mayor and city council of a city of the second class or board of trustees of a village may construct and repair sidewalks or cause the construction and repair of sidewalks in such manner as the mayor and city council or board of trustees deems necessary and assess the expense thereof on the property in front of which such construction or repairs are made, after having given notice (a) by publication in one issue of a legal newspaper of general circulation in such city or village and (b) by either causing a written notice to be served upon the occupant in possession of the property involved or to be posted upon such premises ten days prior to the commencement of such construction or repair. The powers conferred under this section are in addition to those provided in sections 17-509 to 17-521 and may be exercised without creating an improvement district.

(2) If the owner of any property abutting any street or avenue or part thereof fails to construct or repair any sidewalk in front of the owner's property within the time and in the manner as directed and requested by the mayor and council or board of trustees, after having received due notice to do so, the mayor and council or board of trustees may cause the sidewalk to be constructed or repaired and may assess the cost thereof against the property.

Source: Laws 1879, § 69, V, p. 211; Laws 1881, c. 23, § 8, V, p. 173; Laws 1885, c. 20, § 1, V, p. 163; Laws 1887, c. 12, § 1, V, p. 292; R.S.1913, § 5111; C.S.1922, § 4284; C.S.1929, § 17-433; Laws 1943, c. 31, § 1, p. 141; R.S.1943, § 17-522; Laws 1947, c. 34, § 1, p. 144; Laws 2005, LB 161, § 6.

Law requires the village or city officer to use only reasonable diligence to keep the walks in a reasonably safe condition for the use by persons passing over them. Hupfer v. City of North Platte, 134 Neb. 585, 279 N.W. 168 (1938); Gates v. City of North Platte, 126 Neb. 785, 254 N.W. 418 (1934); Strubble v. Village of DeWitt, 81 Neb. 504, 116 N.W. 154 (1908).

The repair of sidewalks is at the cost of the owner. Gibson v. Troupe, 96 Neb. 770, 148 N.W. 944 (1914).

17-523 Sidewalks; temporary walks; construction; cost.

Second-class cities and villages shall have the power to provide for the laying of temporary plank, brick, stone or concrete sidewalks, upon the natural surface of the ground, without regard to grade, on streets not permanently improved, at a cost for plank walks not exceeding fifty cents a linear foot, or for brick, stone or concrete walks not exceeding one dollar and twenty-five cents a linear foot, and to provide for the assessment of the cost thereof on the property in front of which the same shall be laid.

Source: Laws 1879, § 69, VI, p. 211; Laws 1881, c. 23, § 8, VI, p. 173; Laws 1885, c. 20, § 1, VI, p. 164; Laws 1887, c. 12, § 1, VI, p. 292; Laws 1905, c. 29, § 1, p. 255; R.S.1913, § 5112; C.S.1922, § 4285; C.S.1929, § 17-434.

This section governs the construction of temporary sidewalks on ungraded and unimproved streets. Whitla v. Connor, 114 Neb. 526, 208 N.W. 670 (1926).

The terms of this section provide for the construction of temporary, as distinguished from permanent, sidewalk improvements. Gibson v. Troupe, 96 Neb. 770, 148 N.W. 944 (1914).

The provisions for estimates are jurisdictional, and without compliance therewith, there is no authority for a special tax. Moss v. City of Fairbury, 66 Neb. 671, 92 N.W. 721 (1902).

A sidewalk is defined as that portion of a public highway which is set apart by dedication, ordinance, or otherwise for the

use of pedestrians. City of Ord v. Nash, 50 Neb. 335, 69 N.W. 964 (1897).

17-524 Streets and sidewalks; improvements; assessments; how made; collection.

Assessments made under the provisions of sections 17-509 to 17-523 shall be made and assessed in the following manner:

(1) Such assessment shall be made by the council or board of trustees at a special meeting, by a resolution, taking into account the benefits derived or injuries sustained in consequence of such improvements, and the amount charged against the same, which, with the vote thereon by yeas and nays, shall be spread at length upon the minutes; and notice of the time of holding such meeting and the purpose for which it is to be held, shall be published in some newspaper published or of general circulation in said city or village at least four weeks before the same shall be held or, in lieu thereof, personal service may be had upon persons owning or occupying property to be assessed;

(2) All such assessments shall be known as special assessments for improvements, and shall be levied and collected as a separate tax, in addition to the taxes for general revenue purposes, and shall be placed on the tax roll for collection, subject to the same penalties and collected in like manner as other city or village taxes.

Source: Laws 1879, § 69, VII, p. 212; Laws 1881, c. 23, § 8, VII, p. 174; Laws 1885, c. 20, § 1, VII, p. 164; Laws 1887, c. 12, § 1, VII, p. 292; R.S.1913, § 5113; C.S.1922, § 4286; C.S.1929, § 17-435; R.S.1943, § 17-524; Laws 1955, c. 40, § 1, p. 155.

1. Authority to improve
2. Procedure for assessment
3. Review of proceedings
4. Enforcement
5. Miscellaneous

1. Authority to improve

Special assessments are levied on basis of benefits accruing to property and not on basis of cost of improvement immediately in front of property. Chicago & N. W. Ry. Co. v. City of Seward, 166 Neb. 662, 90 N.W.2d 282 (1958).

Property of railroad was taxable for all special benefits received. Chicago & N. W. Ry. Co. v. City of Seward, 166 Neb. 123, 88 N.W.2d 175 (1958).

Municipality cannot assess for public improvement adjacent property beyond the amount of the present benefit or its reasonably prospective benefit. Munsell v. City of Hebron, 117 Neb. 251, 220 N.W. 289 (1928).

City council has no authority to assess abutting lot owner with cost of paving that part of street taken by street railway. Wales v. Warren, 66 Neb. 455, 92 N.W. 590 (1902).

2. Procedure for assessment

Notice is provided by this section to taxpayer of levy of special assessments for paving. Elliott v. City of Auburn, 172 Neb. 1, 108 N.W.2d 328 (1961).

Assessments may be made by resolution. Chicago, St. P., M. & O. Ry. Co. v. City of Randolph, 163 Neb. 687, 81 N.W.2d 159 (1957).

This section designates the manner special assessments shall be made and does not give a village authority to reapportion or reassess special assessments. Village of Winside v. Brune, 133 Neb. 80, 274 N.W. 212 (1937).

The burden is on a person assailing an assessment as void for paving to prove the invalidating facts. City of Superior v. Simpson, 114 Neb. 698, 209 N.W. 505 (1926); Whitla v. Connor, 114 Neb. 526, 208 N.W. 670 (1926).

Where the board failed to find the value of the property or mention damages sustained but did find the benefits and levy tax in that amount, there was to that extent substantial compliance with this section and the assessment was not void. Biggerstaff v. City of Broken Bow, 112 Neb. 4, 198 N.W. 156 (1924).

Railroad properties are assessed on the same basis as other abutting property notwithstanding their use. Chicago & N. W. Ry. Co. v. City of Albion, 109 Neb. 739, 192 N.W. 233 (1923).

Where personal notice is relied upon, it must be given in such time as to allow property owner a reasonable time to prepare for the hearing. Hull v. City of Humboldt, 107 Neb. 326, 186 N.W. 78 (1921).

If it appears the board in levying the assessment did not take into account the benefits and damages resulting from the construction of the sidewalk and levied the total cost thereof without regard to such benefits and damages, the tax is void and may be enjoined. Schneider v. Plum, 86 Neb. 129, 124 N.W. 1132 (1910).

Provisions for engineers' estimates are jurisdictional and such estimates must be submitted and approved before council can levy special assessment for sidewalk against adjacent property. Moss v. City of Fairbury, 66 Neb. 671, 92 N.W. 721 (1902).

Notice of the time and purpose of holding of the meeting is jurisdictional, and equalization and levy, made without notice, is void. Cook v. Gage County, 65 Neb. 611, 91 N.W. 559 (1902).

3. Review of proceedings

This section does not provide for appeal to the district court from action of council sitting as a board of equalization in levying special assessments for paving, and review may be had only by error proceedings. Roberts v. City of Mitchell, 131 Neb. 672, 269 N.W. 515 (1936).

4. Enforcement

Property owner has option to pay assessment in installments as they accrue with interest or to pay balance of assessment at any time with interest to date of payment. State ex rel. Todd v. Thomas, 127 Neb. 891, 257 N.W. 265 (1934).

While there is a distinction between taxes levied for sidewalk construction and taxes for general revenue, there is no difference in the method of enforcement. Wilson v. City of Auburn, 27 Neb. 435, 43 N.W. 257 (1889).

5. Miscellaneous

Cited but not discussed. Campbell v. City of Ogallala, 183 Neb. 238, 159 N.W.2d 574 (1968).

A special assessment can only be enjoined when the record shows some jurisdictional defect in the proceedings. Bemis v. McCloud, 4 Neb. Unof. 731, 97 N.W. 828 (1903).

Where no levy has been made by the council for sidewalk, no lien will be created even though the tax be certified to county board and entered as a tax against the property. Hall v. Moore, 3 Neb. Unof. 574, 92 N.W. 294 (1902).

17-525 Occupation tax; power to levy; exceptions.

Second-class cities and villages shall have power to raise revenue by levying and collecting a license tax on any occupation or business within the limits of the city or village, and regulate the same by ordinance. All such taxes shall be uniform in respect to the classes upon which they are imposed; *Provided,* all scientific and literary lectures and entertainments shall be exempt from such taxation, as well as concerts and other musical entertainments given exclusively by the citizens of the city or village.

Source: Laws 1879, § 69, VIII, p. 212; Laws 1881, c. 23, § 8, VIII, p. 174; Laws 1885, c. 20, § 1, VIII, p. 165; Laws 1887, c. 12, § 1, VIII, p. 293; R.S.1913, § 5114; C.S.1922, § 4287; C.S.1929, § 17-436.

1. Valid ordinance
2. Invalid ordinance
3. Miscellaneous

1. Valid ordinance

Penal provision of an occupation tax ordinance which provides for the enforcement and collection of tax by imposition of a fine is valid and enforceable. Western Union Telegraph Co. v. City of Franklin, 93 Neb. 704, 141 N.W. 819 (1913).

Village board may levy an occupation tax upon the practice of medicine. Village of Dodge v. Guidinger, 87 Neb. 349, 127 N.W. 122 (1910).

Payment of occupation tax under one ordinance did not prevent municipality from requiring a license to transact business of billiard and pool room under another ordinance. McCarter v. City of Lexington, 80 Neb. 714, 115 N.W. 303 (1908).

A village may impose a reasonable occupation tax upon telegraph companies doing business within its limits though such tax should be restricted so as not to include interstate or government business. Western Union Telegraph Co. v. Village of Wakefield, 69 Neb. 272, 95 N.W. 659 (1903).

Validity of an ordinance can be questioned only by one whose rights are directly affected thereby. Flick v. City of Broken Bow, 67 Neb. 529, 93 N.W. 729 (1903).

Village trustees are authorized to raise general revenue by levying and collecting a license tax on persons engaged in the business of conducting billiard and pool rooms. Morgan v. State, 64 Neb. 369, 90 N.W. 108 (1902).

A city may impose an occupation tax by ordinance upon a fire insurance company for the purpose of maintenance of a volunteer fire department. German-American Fire Ins. Co. v. City of Minden, 51 Neb. 870, 71 N.W. 995 (1897).

Cities of second class and villages are empowered to impose occupation tax on saloons in addition to the collecting of fees for license to sell liquor, but such tax cannot be made a condition precedent to the issuing of such license. State ex rel. Sage v. Bennett, 19 Neb. 191, 26 N.W. 714 (1886).

2. Invalid ordinance

Municipalities by ordinance must not make arbitrary classification of business for the purpose of levying occupation tax, and such tax must apply uniformly and not be so high as to be confiscatory. Speier's Laundry Co. v. City of Wilber, 131 Neb. 606, 269 N.W. 119 (1936).

Where salesman took orders for future delivery and later delivered such goods which had been shipped in original packages from outside of state, such acts are incident to interstate commerce and such business is not subject to an occupation tax. Purchase v. State of Nebraska, 109 Neb. 457, 191 N.W. 677 (1922).

Village board by ordinance could regulate but could not suppress billiard and pool halls. State ex rel. McMonies v. McMonies, 75 Neb. 443, 106 N.W. 454 (1906).

3. Miscellaneous

Occupation tax is a civil liability to be collected by levy and sale of property and not by imprisonment. State v. Green, 27 Neb. 64, 42 N.W. 913 (1889).

17-526 Dogs and other animals; license tax; enforcement.

Second-class cities and villages may, by ordinance entered at large on the proper journal or record of proceedings of such municipality, impose a license tax in an amount which shall be determined by the governing body of such second-class city or village for each dog or other animal, on the owners and

harborers of dogs and other animals, and enforce the same by appropriate penalties, and cause the destruction of any dog or other animal, for which the owner or harborer shall refuse or neglect to pay such license tax. Any licensing provision shall comply with subsection (2) of section 54-603 for dog guides, hearing aid dogs, and service dogs. Such municipality may regulate, license, or prohibit the running at large of dogs and other animals and guard against injuries or annoyances therefrom and authorize the destruction of the same when running at large contrary to the provisions of any ordinance.

Source: Laws 1879, § 69, X, p. 213; Laws 1881, c. 23, § 8, X, p. 175; Laws 1885, c. 20, § 1, X, p. 165; Laws 1887, c. 12, § 1, X, p. 294; Laws 1899, c. 14, § 1, p. 79; R.S.1913, § 5116; C.S.1922, § 4289; C.S.1929, § 17-438; R.S.1943, § 17-526; Laws 1959, c. 59, § 2, p. 253; Laws 1976, LB 515, § 1; Laws 1981, LB 501, § 4; Laws 1997, LB 814, § 5.

17-527 Elections; rules governing; power to prescribe.

Second-class cities and villages shall have power to prescribe the manner of conducting all municipal elections, and the return thereof, and for holding special elections for any purpose provided by law.

Source: Laws 1879, § 69, XI, p. 213; Laws 1881, c. 23, § 8, XI, p. 175; Laws 1885, c. 20, § 1, XI, p. 166; Laws 1887, c. 12, § 1, XI, p. 294; R.S.1913, § 5117; C.S.1922, § 4290; C.S.1929, § 17-439; R.S.1943, § 17-527; Laws 1959, c. 60, § 55, p. 272.

17-528 Electricity; franchises and contracts; tax; sale by public service company to city.

Second-class cities and villages shall have power to grant a franchise for a period of not to exceed twenty-five years, to any person, company, corporation or association, whether publicly or privately owned, to furnish light and power to the residents, citizens and corporations doing business in such city or village, and to make contracts, for a period of not to exceed five years, with such person, company or association for the furnishing of light for the streets, lanes, alleys and other public places and property of said city or village, and the inhabitants thereof, the furnishing of electricity to pump water or similar services for such city or village and to levy a tax for the purpose of paying the costs of such lighting the streets, lanes, alleys and other public places and property of said city or village. No public service company, whether publicly or privately owned, shall sell to any city of the second class or village, now generating its own electric current for all or the major portion of its electric requirements, unless first authorized so to do by a vote of the electors of such city or village, in the same manner and subject to the same conditions as are set forth in section 18-412; *Provided,* that if no tax or issuance of bonds is required, any city of the second class or village may by resolution of the city council or board of trustees contract for the furnishing of electricity at retail to such city or village, or to any electric plant within such city or village, with any public power district, or an electric cooperative which cooperative has an approved retail service area adjoining such city or village.

Source: Laws 1879, § 69, XIV, p. 214; Laws 1881, c. 23, § 8, XIV, p. 176; Laws 1885, c. 20, § 1, XIV, p. 166; Laws 1887, c. 12, § 1, XIV, p. 295; Laws 1895, c. 16, § 1, p. 111; Laws 1905, c. 27, § 1, p. 252;

R.S.1913, § 5118; C.S.1922, § 4291; C.S.1929, § 17-440; Laws 1943, c. 28, § 2, p. 124; R.S.1943, § 17-528; Laws 1965, c. 58, § 2, p. 266; Laws 1969, c. 83, § 2, p. 419.

This section was not applicable to specific contract authorized by the Constitution. City of O'Neill v. Consumers P. P. Dist., 179 Neb. 773, 140 N.W.2d 644 (1966).

17-528.01 Repealed. Laws 1957, c. 33, § 2.

17-528.02 Gas franchises; length; conditions; tax.

Second-class cities and villages shall have power to grant a franchise, subject to the conditions of this section and section 17-528.03, for a period not exceeding twenty-five years to any person, company, or association, whether publicly or privately owned, and to his or its assigns, to lay and maintain gas mains, pipes, service, and all other necessary structures in the streets, lanes, alleys, and public places of such city or village for the purpose of transporting gas on, under, or along any streets, lanes, alleys, and public places of said city or village and for furnishing the same to the inhabitants thereof. Such city or village may make any reasonable regulation with reference to any person, firm, or corporation holding such franchise as to charges for such gas. Such city or village is authorized to contract, lease, or rent the gas plant from any person, firm, or corporation furnishing gas within such city or village. Such contract, lease or rental agreement shall not be for a period longer than five years. It may levy a tax to pay the rent under the above-mentioned lease or to pay for any gas used for street lighting or for other necessary purposes.

Source: Laws 1879, § 39, VI, p. 201; Laws 1881, c. 24, § 1, p. 195; Laws 1905, c. 27, § 1, p. 252; Laws 1911, c. 18, § 1, p. 135; R.S.1913, § 5019; Laws 1919, c. 45, § 1, p. 129; C.S.1922, § 4188; C.S. 1929, § 17-127; Laws 1943, c. 28, § 1, p. 123; R.S.1943, § 17-125; Laws 1957, c. 33, § 1(1), p. 196; Laws 1959, c. 49, § 1, p. 237.

Right of regulation of rates to be charged for gas is reserved to municipality. Nebraska Natural Gas Co. v. City of Lexington, 167 Neb. 413, 93 N.W.2d 179 (1958).

Power to regulate rates is delegated to municipality but rates must not be confiscatory. Kansas-Nebraska Natural Gas Co. v. City of St. Edward, 167 Neb. 15, 91 N.W.2d 69 (1958).

City may make regulations with reference to holders of franchise for distribution of gas. City of Bayard v. North Central Gas Co., 164 Neb. 819, 83 N.W.2d 861 (1957).

City council is empowered to fix rates for the term of franchise. Kansas-Nebraska Natural Gas Co. v. City of St. Edward, 134 F.Supp. 809 (D. Neb. 1955).

17-528.03 Electricity franchises; length; conditions; election, when required; exceptions.

Second-class cities and villages shall have power to grant a franchise subject to the conditions of this section or section 17-528.02. Such franchise may run for a period not exceeding twenty-five years. It may be granted to any person, company, or association, whether publicly or privately owned, and to his or its assigns. Such franchise may permit it to erect and maintain poles, lines, wires, and conductors for electricity in the streets, lanes, alleys and public places of said city or village and for furnishing the same to the inhabitants thereof. Such franchise may establish the amount that may be charged during such period for electricity and provide that such city or village may, after such period, make any reasonable regulation with reference to any person, firm, or corporation holding such franchise either as to charges for electricity or otherwise. Such city or village is further authorized to contract, lease, or rent the plant, from

any person, firm, or corporation, furnishing electricity, within such city or village, for power or the lighting of streets, lanes, alleys and public places of such city or village, but not for a period longer than five years. It may levy a tax for the purpose of paying the cost of such lighting of streets, lanes, alleys or public places of such city or village or to pay the rent under the above-mentioned lease. No public service company, whether publicly or privately owned, shall sell to any city of the second class or village, now generating its own electric energy for all or a major portion of its electric requirements, unless first authorized so to do by a vote of the electors of such city or village, in the same manner and subject to the same conditions as are set forth in section 18-412; *Provided,* that if no tax or issuance of bonds is required, any city of the second class or village may by resolution of the city council or board of trustees contract for the furnishing of electricity at retail to such city or village, or to any electric plant within such city or village, with any public power district, or an electric cooperative which cooperative has an approved retail service area adjoining such city or village.

Source: Laws 1879, § 39, VI, p. 201; Laws 1881, c. 24, § 1, p. 195; Laws 1905, c. 27, § 1, p. 252; Laws 1911, c. 18, § 1, p. 135; R.S.1913, § 5019; Laws 1919, c. 45, § 1, p. 129; C.S.1922, § 4188; C.S. 1929, § 17-127; Laws 1943, c. 28, § 1, p. 123; R.S.1943, § 17-125; Laws 1957, c. 33, § 1(2), p. 197; Laws 1965, c. 58, § 3, p. 267; Laws 1969, c. 83, § 3, p. 419.

This section was not applicable to specific contract authorized by the Constitution. City of O'Neill v. Consumers P. P. Dist., 179 Neb. 773, 140 N.W.2d 644 (1966).

17-529 Watercourses; aqueducts; wells; regulation.

Second-class cities and villages shall have power (1) to establish and alter the channel of watercourses, and to wall them and cover them over, (2) to establish and regulate wells, cisterns and windmills, aqueducts and reservoirs of water, (3) to provide for filling the same, and (4) to erect and maintain a dike or dikes as protection against flood or surface waters.

Source: Laws 1879, § 69, XV, p. 214; Laws 1881, c. 23, § 8, XV, p. 176; Laws 1885, c. 20, § 1, XV, p. 167; Laws 1887, c. 12, § 1, XV, p. 295; Laws 1893, c. 8, § 1, p. 133; Laws 1903, c. 21, § 1, p. 250; Laws 1905, c. 30, § 1, p. 256; Laws 1907, c. 17, § 1, p. 126; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 270; Laws 1919, c. 48, § 1, p. 136; Laws 1919, c. 52, § 1, p. 150; Laws 1919, c. 46, § 2, p. 131; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 156; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 141; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-529; Laws 1947, c. 35, § 1(1), p. 146.

City was authorized to erect and maintain a dike as protection against flood or surface waters. Gruntorad v. Hughes Bros. Inc., 161 Neb. 358, 73 N.W.2d 700 (1955).

A village has the right, under police power, to control lateral of irrigation ditch through one of its streets. Thornton v. Kingrey, 100 Neb. 525, 160 N.W. 871 (1916), affirmed on rehearing, 101 Neb. 631, 164 N.W. 561 (1917).

Where a municipality fills a channel with earth and fails to provide a sufficient outlet for passage of natural flood waters, damaging property, it is liable therefore. McClure v. City of Broken Bow, 81 Neb. 384, 115 N.W. 1081 (1908).

17-529.01 Dikes; erection and maintenance; eminent domain; procedure.

In connection with the power to establish and alter the channel of watercourses and the power to erect and maintain dikes against flood waters and

surface waters, such cities and villages shall be empowered to exercise the power of eminent domain to acquire easements and rights-of-way over real estate situated either within or not more than two miles outside the corporate limits of any such city or village, for the purpose of constructing either a ditch or a dike to prevent flooding of such city or village. The procedure for taking and condemning real estate for such purpose shall be exercised in the manner set forth in sections 76-704 to 76-724. In connection with such condemnation proceedings, the city or village shall be liable not only for the land actually taken but for consequential damages to other lands damaged by the construction of such improvement, and shall be authorized to pay such damages out of any available funds on hand or by the issuance of bonds as provided by law.

Source: Laws 1947, c. 35, § 1(2), p. 146; Laws 1949, c. 23, § 1, p. 95; Laws 1951, c. 101, § 56, p. 473; Laws 1953, c. 287, § 16, p. 939; Laws 1965, c. 66, § 1, p. 286.

Cross References

For additional flood control powers and duties of cities of the second class and villages, see section 23-320.07.
For funding provisions, see section 17-529.08.

Exercise of powers of eminent domain and taxation were authorized for flood control project. Gruntorad v. Hughes Bros. Inc., 161 Neb. 358, 73 N.W.2d 700 (1955).

17-529.02 Flood control projects; cooperation with United States; consent to requirements.

Such cities and villages may cooperate with the United States Government in protecting against floods and enter into agreements with such government for that purpose. They may, in order to obtain federal funds for that purpose, consent to requirements of the Congress of the United States that such city or village (1) provide without cost to the United States all lands, easements and rights-of-way necessary for the construction of flood control projects, (2) hold and save the United States free and harmless from damages due to the construction works, and (3) maintain and operate all the flood control works after completion in accordance with regulations prescribed by the Secretary of the Army of the United States.

Source: Laws 1947, c. 35, § 1(3), p. 146; Laws 1972, LB 1047, § 1.

City is authorized to enter into agreements with United States to maintain and operate flood control projects. Gruntorad v. Hughes Bros. Inc., 161 Neb. 358, 73 N.W.2d 700 (1955).

17-529.03 Flood control projects; removal to another site; definitions.

As used in sections 17-529.03 to 17-529.07: (1) The term old city or village shall mean a city of the second class or village at its old location, and is not used in the sense that it is another or different city or village after its removal to a new site; (2) the term new city or village shall mean a city of the second class or village at its new location, and is not used in the sense that it is another or different city or village than it was before its removal from an old site; (3) the term county board shall mean and include a board of county commissioners or a board of supervisors of a county, as the case may be; and (4) the term governing board shall mean the city council of a city of the second class, or the board of trustees of a village, as the case may be.

Source: Laws 1947, c. 44, § 1, p. 160.

17-529.04 Flood control projects; removal to another site; when authorized.

Whenever the United States Government acquires by purchase or under eminent domain the entire site upon which a city of the second class or a village is located under any flood control project, such city or village may be removed to another site and retain its corporate identity by observing the procedure set out in sections 17-529.05 and 17-529.06.

Source: Laws 1947, c. 44, § 2, p. 160.

17-529.05 Flood control projects; removal to another site; petition; contents; order for hearing; notice.

Whenever a petition is filed with the county clerk of any county, signed by either the governing board of any city of the second class or village or by one hundred or more electors of any city of the second class or village within such county setting forth: (1) That the United States Government has acquired, or is about to acquire, by purchase or eminent domain or both, the entire site upon which such city or village is located; (2) that the petitioners desire such city or village removed to another site and the corporate identity retained; (3) that a new site has been acquired, or contracted to be acquired, to which the old city or village can be removed; (4) that the petitioners intend to become residents of the new city or village when it is removed to the proposed new site; and (5) offer to pay all costs of the proceedings to effectuate such removal, the county board of such county shall enter an order setting such petition down for hearing not less than thirty nor more than sixty days after the filing of such petition, and shall cause notice thereof to be given by publication three successive weeks prior to such hearing in a legal newspaper of general circulation in such county.

Source: Laws 1947, c. 44, § 3, p. 160.

17-529.06 Flood control projects; removal to another site; hearing; entry of order.

Upon the hearing, if the county board shall find that the statements set forth in the petition are true and that it is for the best interests of the old city or village to authorize such removal, it shall enter an order granting such petition.

Source: Laws 1947, c. 44, § 4, p. 161.

17-529.07 Flood control projects; removal to another site; order; effect.

The order granting such petition shall have the following effect:

(1) The name and corporate identity of the old city or village shall be retained by the new city or village.

(2) The officers of the old city or village shall continue to be the officers of the new city or village until their successors are elected and qualified at the time and in the manner provided by law.

(3) The funds and property of the old city or village shall be retained by and belong to the new city or village.

(4) The proceeds from the sale or condemnation of municipally owned property of the old city or village shall accrue and be paid to the new city or village, except that any outstanding bonded indebtedness of or judgments

against the old city or village shall be paid to the holders of such bonds or judgments who shall demand payment thereof and are not willing to permit such bonds or judgments to continue as an indebtedness due from the new city or village.

(5) The ordinances of the old city or village shall continue in full force and effect as the ordinances of the new city or village.

(6) The proceeds from the sale or condemnation of any public school buildings and grounds, either grade or high school or both, situated within the old city or village shall be used for the purchase and construction of a new school building and grounds at the new site, if the new site is located within the same school district as the old site, and if not, the proceeds shall be apportioned between the school district in which the new city or village is located and the school district in which the old city or village was located in the proportion that the actual valuation of the property purchased and condemned by the United States Government in such school district bears to the valuation of the property remaining in such school district not condemned or purchased by the United States Government.

(7) The proceeds from the sale or condemnation of any public buildings and grounds of any township in which the old city or village was located shall be used for the purchase and construction of similar buildings and grounds at the new site, if the new site is located within the same township as the old site, and if not, the proceeds shall be apportioned between the township in which the new city or village is located and the township in which the old city or village was located in the proportion that the actual valuation of the property purchased and condemned by the United States Government in such township bears to the actual valuation of the property remaining in such township not condemned or purchased by the United States Government.

Source: Laws 1947, c. 44, § 5, p. 161; Laws 1979, LB 187, § 51.

17-529.08 Flood control projects; bonds; interest; election; tax; levy.

(1) For the purpose of paying the costs and expenses in implementing sections 17-529.01 and 17-529.02, cities of the second class and villages may borrow money or issue bonds in an amount not to exceed five percent of the taxable valuation of all the taxable property within such city or village according to the last preceding assessment thereof.

(2) Such cities or villages may levy and collect a general tax in the same manner as other municipal taxes are levied and collected in an amount sufficient to pay the interest and principal of the bonds referred to in subsections (1) and (3) of this section, as the same mature, upon the taxable value of all the taxable property within such city or village as shown upon the assessment roles, in addition to the sum authorized to be levied under section 17-506.

(3) No money shall be borrowed or bonds issued as referred to in subsections (1) and (2) of this section unless authorized by a majority of the legal votes cast for and against the proposition at an election held for that purpose. Notice of the election shall be given by publication in some newspaper published or of general circulation in such city or village for at least two weeks prior to the date of such election. The bonds shall be the bonds of such city or village, shall

become due in not to exceed twenty years from their date of issue, and shall draw interest payable semiannually or annually.

Source: Laws 1965, c. 73, § 1, p. 296; Laws 1969, c. 51, § 46, p. 300; Laws 1971, LB 534, § 14; Laws 1979, LB 187, § 52; Laws 1992, LB 719A, § 53.

17-530 Waterworks; franchises; terms.

Second-class cities and villages shall have power to make contracts with and authorize any person, company or corporation to erect and maintain a system of waterworks and water supply, and to give such contractors the exclusive privilege for a term not exceeding twenty-five years to lay down in the streets and alleys of such city or village water mains and supply pipes, and to furnish water to such city or village, and the residents thereof, under such regulations as to price, supply, and rent of water meters, as the council or board of trustees may from time to time prescribe by ordinance for the protection of the city, village or people. The right to supervise and control such person, company or corporation shall not be waived or set aside.

Source: Laws 1881, c. 23, § 8, XV, p. 176; Laws 1885, c. 20, § 1, XV, p. 167; Laws 1887, c. 12, § 1, XV, p. 295; Laws 1893, c. 8, § 1, p. 133; Laws 1903, c. 21, § 1, p. 250; Laws 1905, c. 30, § 1, p. 256; Laws 1907, c. 17, § 1, p. 126; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 271; Laws 1919, c. 46, § 2, p. 131; Laws 1919, c. 48, § 1, p. 137; Laws 1919, c. 52, § 1, p. 150; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 157; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 141; C.S.Supp.,1941, § 17-441.

An ordinance, contracting for supply of water and payment therefor with private water company, is valid even though not preceded by an appropriation to meet such water rentals. City of North Platte v. North Platte Water-Works Co., 56 Neb. 403, 76 N.W. 906 (1898).

City of second class is authorized to contract with third persons to erect and maintain a system of waterworks to supply water. North Platte Water-Works Company v. City of North Platte, 50 Neb. 853, 70 N.W. 393 (1897).

An agreement to rent more hydrants than the assessed valuation of property in a municipality will justify does not affect the validity of contract to erect and maintain a waterworks system. State ex rel. Tarr v. City of Crete, 32 Neb. 568, 49 N.W. 272 (1891).

17-531 Waterworks; acquisition or construction authorized.

Second-class cities and villages shall have power to provide for the purchase of steam engines or fire-extinguishing apparatus and for a supply of water for the purpose of fire protection and public use and for the use of the inhabitants of such cities and villages by the purchase, erection or construction of a system of waterworks, water mains or extensions of any system of waterworks established or situated in whole or in part within such city or village, and for maintaining the same.

Source: Laws 1885, c. 20, § 1, XV, p. 167; Laws 1887, c. 12, § 1, XV, p. 296; Laws 1893, c. 8, § 1, p. 133; Laws 1903, c. 21, § 1, p. 250; Laws 1905, c. 30, § 1, p. 256; Laws 1907, c. 17, § 1, p. 126; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 271; Laws 1919, c. 48, § 1, p. 137; Laws 1919, c. 52, § 1, p. 151; Laws 1919, c. 46, § 2, p. 131; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 157; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 142; C.S.Supp.,1941, § 17-441.

Contract for construction of waterworks was not ultra vires where city had authority to make it though part of funds were diverted from purpose for which voted. Chicago Bridge & Iron Works v. City of South Sioux City, 108 Neb. 827, 189 N.W. 367 (1922).

City engaged in a commercial enterprise is liable to public for its negligence the same as individuals. Reed v. Village of Syracuse, 83 Neb. 713, 120 N.W. 180 (1909).

There is no grant of power, either to a franchise corporation or to the city, in maintaining its own waterworks, to sell meters, or to compel consumers to supply themselves with meters. Albert v. Davis, 49 Neb. 579, 68 N.W. 945 (1896).

17-532 Waterworks; private companies; compulsory connections.

Second-class cities and villages shall have power to require any person, firm or corporation operating any public water supply in such city or village to connect with and furnish water to such city or village from its mains located therein, and to provide by ordinance for connections of such mains with the mains or portion of water system constructed or operated by such city or village, under such regulations and under such penalties as may be prescribed therein.

Source: Laws 1907, c. 17, § 1, p. 126; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 271; Laws 1919, c. 48, § 1, p. 137; Laws 1919, c. 52, § 1, p. 151; Laws 1919, c. 46, § 2, p. 131; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 157; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 142; C.S.Supp.,1941, § 17-441.

17-533 Waterworks; construction; bids.

All contracts for the construction of any such work, or any part thereof, shall be let to the lowest responsible bidder therefor, and upon not less than twenty days' published notice of the terms and conditions upon which the contract is to be let having been given by publication in a newspaper published in said city or village, and if no newspaper is published therein, then in some newspaper published in the county; *Provided,* in all cases the council or board of trustees, as the case may be, shall have the right to reject any and all bids that may not be satisfactory to them.

Source: Laws 1881, c. 23, § 8, XV, p. 177; Laws 1885, c. 20, § 1, XV, p. 167; Laws 1887, c. 12, § 1, XV, p. 296; Laws 1893, c. 8, § 1, p. 133; Laws 1903, c. 21, § 1, p. 250; Laws 1905, c. 30, § 1, p. 256; Laws 1907, c. 17, § 1, p. 127; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 271; Laws 1919, c. 48, § 1, p. 137; Laws 1919, c. 52, § 1, p. 151; Laws 1919, c. 46, § 2, p. 131; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 157; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 142; C.S.Supp.,1941, § 17-441.

Estimate of costs must be made and submitted by city engineer before council can make contract and such estimate cannot be raised by the engineer after the bids have been opened. Murphy v. City of Plattsmouth, 78 Neb. 163, 110 N.W. 749 (1907).

City is only authorized to contract after advertising for bids and with only such persons as tender a bid in response to such advertisement. Fairbanks, Morse & Co. v. City of North Bend, 68 Neb. 560, 94 N.W. 537 (1903).

17-534 Waterworks; purchase or construction; bonds; interest; limitation; tax; approval of electors required; exception.

(1) Such cities or villages may borrow money or issue bonds in an amount not to exceed twelve percent of the taxable valuation of all the taxable property within such city or village according to the last preceding assessment thereof, for the purchase of steam engines or fire-extinguishing apparatus and for the purchase, construction, and maintenance of such waterworks, mains, portion, or extension of any system of waterworks or water supply or to pay for water furnished such city or village under contract, when authorized as is provided for by subsection (3) of this section.

(2) Such cities or villages may levy and collect a general tax in the same manner as other municipal taxes are levied and collected in an amount sufficient to pay the interest and principal of the bonds referred to in subsections (1) and (3) of this section, as the same mature, upon the taxable value of all the taxable property within such city or village as shown upon the assessment rolls, in addition to the sum authorized to be levied under section 17-506. All taxes raised by such a levy shall be retained in a fund known as the water fund.

(3) No money shall be borrowed or bonds issued as referred to in subsections (1) and (2) of this section unless authorized by a majority of the legal votes of such city or village cast for and against the proposition at an election held for that purpose. Notice of the election shall be given by publication in some newspaper published or of general circulation in such city or village for at least two weeks prior to the date of such election. The requirement of this section of a vote of the electors shall not apply when the proceeds of the bonds will be used solely for the maintenance, extension, improvement, or enlargement of any existing system of waterworks or water supply owned by the city or village and the bonds have been ordered issued by a vote of not less than three-fourths of all the city council or board of trustees as the case may be. The bonds shall be the bonds of such city or village and be called water bonds. They shall become due in not to exceed forty years from the date of issue and shall draw interest payable semiannually or annually.

Source: Laws 1881, c. 23, § 8, XV, p. 177; Laws 1885, c. 20, § 1, XV, p. 168; Laws 1887, c. 20, § 1, XV, p. 296; Laws 1893, c. 8, § 1, p. 134; Laws 1903, c. 21, § 1, p. 250; Laws 1905, c. 30, § 1, p. 257; Laws 1907, c. 17, § 1, p. 127; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 271; Laws 1919, c. 48, § 1, p. 138; Laws 1919, c. 52, § 1, p. 151; Laws 1919, c. 46, § 2, p. 132; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 158; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 142; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-534; Laws 1945, c. 30, § 1, p. 147; Laws 1949, c. 24, § 1, p. 96; Laws 1955, c. 50, § 1, p. 169; Laws 1969, c. 51, § 47, p. 301; Laws 1971, LB 83, § 1; Laws 1971, LB 982, § 1; Laws 1979, LB 187, § 53; Laws 1992, LB 719A, § 54.

1. Issuance of bonds
2. Levy of tax
3. Miscellaneous

1. Issuance of bonds

City has no power to issue bonds except as expressly authorized by statute. State ex rel. City of O'Neill v. Marsh, 121 Neb. 841, 238 N.W. 760 (1931).

Where council called bond election by resolution, rather than by ordinance, and where the resolution provided the election should be held at "the regular polling places in the city", such notice was sufficient as to the location of the polling place. State ex rel. City of O'Neill v. Marsh, 106 Neb. 547, 184 N.W. 135 (1921); Hurd v. City of Fairbury, 87 Neb. 745, 128 N.W. 638 (1910).

Where municipality voted bonds and entered into contract for sale thereof in strict conformity with the statute, and, before the bonds were issued, the Legislature by statute changed the terms of such bonds, the validity of the bonds issued containing the terms as so voted is not affected. State ex rel. City of Seward v. Marsh, 104 Neb. 159, 176 N.W. 92 (1920).

Bonds must be issued in conformity with the statute at the time of their issuance. Morgan v. City of Falls City, 103 Neb. 795, 174 N.W. 421 (1919).

A resolution for submission and notice of election duly passed by council providing "for the purpose of purchasing or erecting, constructing, etc.," of a system of waterworks will not be enjoined as submitting two alternative propositions to the voters. Hurd v. City of Fairbury, 87 Neb. 745, 128 N.W. 638 (1910).

Cities cannot issue bonds to aid private parties in construction of waterworks. Village of Grant v. Sherrill, 71 Neb. 219, 98 N.W. 681 (1904).

A notice for a bond election, published in each issue of a paper for five weeks, is sufficient although the first publication was only thirty-two days before such election. State ex rel. Village of Genoa v. Weston, 67 Neb. 385, 93 N.W. 728 (1903).

Valuation, as fixed by last preceding assessment, on the date when proposition for issuance of bonds is submitted to voters, fixes the maximum amount of bonds authorized to be issued.

Chicago, B. & Q. Ry. Co. v. Village of Wilber, 63 Neb. 624, 88 N.W. 660 (1902).

Council of municipality by ordinance has no power to bind the city by the issuance of bonds and guaranteeing their payment beyond the authority expressly given by statute, and such statute should be strictly followed. Painter v. City of Norfolk, 62 Neb. 330, 87 N.W. 31 (1901).

The right to issue water bonds is limited by the assessed valuation as of the date of election thereon. State ex rel. City of Sutton v. Babcock, 24 Neb. 640, 39 N.W. 783 (1888).

Proposition to vote waterworks bonds may be submitted by resolution. State ex rel. City of York v. Babcock, 20 Neb. 522, 31 N.W. 8 (1886).

2. Levy of tax

Powers to levy a tax may be implied from the express power given to incur an obligation where the Legislature must have intended a tax to furnish payments therefrom. Union Pacific R. R. Co. v. Heuer, 97 Neb. 436, 150 N.W. 259 (1914).

City authorities will not be required by mandamus to levy tax for water supply in excess of limit existing at time contract is entered into. State ex rel. Young v. Royse, 71 Neb. 1, 98 N.W. 459 (1904); State ex rel. Young v. Royse, 3 Neb. Unof. 262, 91 N.W. 559 (1902).

3. Miscellaneous

Where a village fails to comply with the requirements essential to borrow money, such borrowing is illegal and void; yet, if the money is retained and subsequently devoted to legitimate municipal purposes, the municipality is liable therefor upon an implied contract, unless barred by statute of limitations. Nebraska State Bank Liquidation Assn. v. Village of Burton, 134 Neb. 623, 279 N.W. 319 (1938).

17-535 Waterworks; construction and maintenance; acquisition of land beyond corporate limits; procedure.

For the purpose of erecting, constructing, locating, maintaining, or supplying such waterworks, mains, portion, or extension of any system of waterworks or water supply, any such city or village may go beyond its territorial limits and may take, hold, acquire rights, property, and real estate by purchase or otherwise, and may for this purpose, take, hold, and condemn any and all necessary property. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1881, c. 23, § 8, XV, p. 178; Laws 1885, c. 20, § 1, XV, p. 169; Laws 1887, c. 12, § 1, XV, p. 297; Laws 1893, c. 8, § 1, p. 135; Laws 1903, c. 21, § 1, p. 251; Laws 1905, c. 30, § 1, p. 257; Laws 1907, c. 17, § 1, p. 128; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 272; Laws 1919, c. 48, § 1, p. 138; Laws 1919, c. 52, § 1, p. 152; Laws 1919, c. 46, § 2, p. 132; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 159; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 143; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-535; Laws 1951, c. 101, § 57, p. 473.

A village is limited to taking only such property as is presently necessary for the purposes described in section 17-531. Engelhaupt v. Village of Butte, 248 Neb. 827, 539 N.W.2d 430 (1995).

17-536 Waterworks; water supply; pollution; power to prevent.

The jurisdiction of such city or village, to prevent any pollution or injury to the stream or source of water for the supply of such waterworks, shall extend fifteen miles beyond its corporate limits.

Source: Laws 1881, c. 23, § 8, XV, p. 178; Laws 1885, c. 20, § 1, XV, p. 169; Laws 1887, c. 12, § 1, XV, p. 298; Laws 1893, c. 8, § 1, p. 135; Laws 1903, c. 21, § 1, p. 251; Laws 1905, c. 30, § 1, p. 258; Laws 1907, c. 17, § 1, p. 128; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 272; Laws 1919, c. 48, § 1, p. 138; Laws 1919, c. 52, § 1, p. 152; Laws 1919, c. 46, § 2, p. 133; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 159; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 143; C.S.Supp.,1941, § 17-441.

A village is limited to taking only such property as is presently necessary for the purposes described in section 17-531. Engelhaupt v. Village of Butte, 248 Neb. 827, 539 N.W.2d 430 (1995).

17-537 Waterworks; rules and regulations.

The council or board of trustees of such cities and villages shall have power to make and enforce all needful rules and regulations in the construction, use, and management of such waterworks, mains, portion or extension of any system of waterworks or water supply and for the use of the water therefrom.

Source: Laws 1881, c. 23, § 8, XV, p. 178; Laws 1885, c. 20, § 1, XV, p. 169; Laws 1887, c. 12, § 1, XV, p. 298; Laws 1893, c. 8, § 1, p. 135; Laws 1903, c. 21, § 1, p. 251; Laws 1905, c. 30, § 1, p. 258; Laws 1907, c. 17, § 1, p. 128; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 272; Laws 1919, c. 48, § 1, p. 139; Laws 1919, c. 52, § 1, p. 152; Laws 1919, c. 46, § 2, p. 133; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 159; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 143; C.S.Supp.,1941, § 17-441.

17-538 Waterworks; use of water; rates or rental; collection.

Such cities and villages shall have the right and power to tax, assess, and collect from the inhabitants thereof such tax, rent or rates for the use and benefit of water used or supplied to them by such waterworks, mains, portion or extension of any system of waterworks or water supply as the council or board of trustees shall deem just or expedient; and all such water rates, taxes or rent shall be a lien upon the premises, or real estate, upon or for which the same is used or supplied; and such taxes, rents or rates shall be paid and collected and such lien enforced in such manner as the council or board of trustees shall by ordinance direct and provide.

Source: Laws 1881, c. 23, § 8, XV, p. 179; Laws 1885, c. 20, § 1, XV, p. 169; Laws 1887, c. 12, § 1, XV, p. 298; Laws 1893, c. 8, § 1, p. 135; Laws 1903, c. 21, § 1, p. 252; Laws 1905, c. 30, § 1, p. 258; Laws 1907, c. 17, § 1, p. 128; R.S.1913, § 5118; Laws 1917, c. 103, § 1, p. 273; Laws 1919, c. 48, § 1, p. 139; Laws 1919, c. 52, § 1, p. 152; Laws 1919, c. 46, § 2, p. 133; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 159; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 143; C.S.Supp.,1941, § 17-441.

The power to fix rates for furnishing water to city and inhabitants is vested in the municipality and such rates are presumed lawful and reasonable unless clearly shown to be confiscatory. McCook Waterworks Co. v. City of McCook, 85 Neb. 677, 124 N.W. 100 (1909).

Where title of ordinance did not refer to contract for ''rental for hydrant'' used in body of ordinance, though the ordinance authorized third party to construct and maintain water system and use the streets, such contract was void as to water rentals. Lincoln Land Co. v. Village of Grant, 57 Neb. 70, 77 N.W. 349 (1898).

17-539 Waterworks; construction; cost; assessments.

The expense of erecting, locating, and constructing reservoirs and hydrants for the purpose of fire protection, and the expense of constructing and laying water mains, pipes or such parts thereof as may be just and lawful, may be assessed upon and collected from the property and real estate especially benefited thereby, if any, in such manner as may be provided for the making of special assessments for other public improvements in such cities and villages.

Source: Laws 1881, c. 23, § 8, XV, p. 179; Laws 1885, c. 20, § 1, XV, p. 170; Laws 1887, c. 12, § 1, XV, p. 298; Laws 1893, c. 8, § 1, p. 135; Laws 1903, c. 21, § 1, p. 252; Laws 1905, c. 30, § 1, p. 258; Laws 1907, c. 17, § 1, p. 128; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 273; Laws 1919, c. 48, § 1, p. 139; Laws 1919, c. 52,

§ 1, p. 153; Laws 1919, c. 46, § 2, p. 133; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 159; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 143; C.S.Supp.,1941, § 17-441.

Doubts as to meaning of statutory limitations as applied to special assessments to acquire water system should be determined in favor of taxpayer. Futscher v. City of Rulo, 107 Neb. 521, 186 N.W. 536 (1922).

17-540 Waterworks; income; how used; surplus, investment.

All income received by such cities or villages from public utilities and from the payment and collection of water taxes, rents, rates or assessments shall be applied to the payment of running expenses, interest on bonds or money borrowed and the erection and construction of public utilities; should there be any surplus, it shall be annually created into a sinking fund for the payment of public utility bonds or for the improvements of the works, or into the general fund as the council or board of trustees may direct. The surplus remaining, if any, may, if the council or board of trustees so directs, be invested in interest-bearing bonds or obligations of the United States.

Source: Laws 1881, c. 23, § 8, XV, p. 179; Laws 1885, c. 20, § 1, XV, p. 170; Laws 1887, c. 12, § 1, XV, p. 299; Laws 1893, c. 8, § 1, p. 136; Laws 1903, c. 21, § 1, p. 252; Laws 1905, c. 30, § 1, p. 258; Laws 1907, c. 17, § 1, p. 129; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 273; Laws 1919, c. 48, § 1, p. 139; Laws 1919, c. 52, § 1, p. 153; Laws 1919, c. 46, § 2, p. 133; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 160; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 144; C.S.Supp.,1941, § 17-441; Laws 1943, c. 27, § 1(1), p. 121; R.S.1943, § 17-540; Laws 1969, c. 93, § 1, p. 459.

17-541 Waterworks; water commissioner; appointment; term; bond or insurance; removal; public works commissioner, when.

As soon as a system of waterworks or mains or portion or extension of any system of waterworks or water supply has been established by any city or village, the mayor of such city or the chairperson of the board of trustees of such village shall nominate and by and with the advice and consent of the city council or board of trustees, as the case may be, shall appoint any competent person who shall be known as the water commissioner of such city or village and whose term of office shall be for one fiscal year or until his or her successor is appointed and qualified. Annually at the first regular meeting of the city council or board of trustees in December, the water commissioner shall be appointed as provided in this section. The water commissioner may at any time, for sufficient cause, be removed by a two-thirds vote of the city council or board of trustees. Any vacancy occurring in the office of water commissioner by death, resignation, removal from office, or removal from the city or village may be filled in the manner provided in this section for the appointment of such commissioner. The water commissioner shall, before he or she enters upon the discharge of his or her duties, execute a bond or provide evidence of equivalent insurance to such city or village in a sum to be fixed by the mayor and council or the board of trustees, but not less than five thousand dollars, conditioned upon the faithful discharge of his or her duties, and such bond shall be signed by two or more good and sufficient sureties, to be approved by the mayor and council or board of trustees or executed by a corporate surety. The water commissioner, subject to the supervision of the mayor and council or board of trustees, shall have the general management and control of the system of

waterworks or mains or portion or extension of any system of waterworks or water supply in the city or village. In a city or village where no board of public works exists, and such municipality has other public utilities than its waterworks system, the mayor and council or the board of trustees, as the case may be, shall by ordinance designate the water commissioner as public works commissioner with authority to manage not only the system of waterworks but also other public utilities, and all of the provisions of this section applying to the water commissioner shall apply to the public works commissioner.

Source: Laws 1881, c. 23, § 8, XV, p. 180; Laws 1885, c. 20, § 1, XV, p. 170; Laws 1887, c. 12, § 1, XV, p. 299; Laws 1893, c. 8, § 1, p. 136; Laws 1903, c. 21, § 1, p. 252; Laws 1905, c. 30, § 1, p. 259; Laws 1907, c. 17, § 1, p. 129; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 273; Laws 1919, c. 48, § 1, p. 139; Laws 1919, c. 52, § 1, p. 153; Laws 1919, c. 46, § 2, p. 134; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 160; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 144; Laws 1937, c. 33, § 1, p. 158; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-541; Laws 1961, c. 51, § 1, p. 193; Laws 2001, LB 484, § 1; Laws 2007, LB347, § 11.

17-542 Waterworks; rates; regulation.

The city council or board of trustees, as the case may be, is hereby expressly given the power to fix the rates to be paid by water consumers of said city or village for the use of water from the waterworks of said city or village, including herein the power to require, as a condition precedent to the use of such water, the furnishing of water meters at the expense of such water consumers as may be provided by ordinance of such city or village.

Source: Laws 1881, c. 23, § 8, XV, p. 181; Laws 1885, c. 20, § 1, XV, p. 171; Laws 1887, c. 12, § 1, XV, p. 300; Laws 1893, c. 8, § 1, p. 137; Laws 1903, c. 21, § 1, p. 253; Laws 1905, c. 30, § 1, p. 259; Laws 1907, c. 17, § 1, p. 129; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 274; Laws 1919, c. 48, § 1, p. 140; Laws 1919, c. 52, § 1, p. 154; Laws 1919, c. 46, § 2, p. 134; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 161; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 145; Laws 1937, c. 33, § 1, p. 158; C.S.Supp.,1941, § 17-441.

17-543 Waterworks; water commissioner; duty to account; report; salary; public works commissioner; duties.

The water commissioner shall collect all money received by the city or village on account of its system of waterworks, and shall faithfully account for and pay over the same to the treasurer of such city or village, taking his or her receipt therefor in duplicate, filing one of the same with the city or village clerk. He or she shall make a detailed report to the city council or board of trustees, at least once every six months, of the condition of the water system, of all mains, pipes, hydrants, reservoirs, and machinery, and such improvements, repairs, and extension thereof as he or she may think proper. The report shall show the amount of receipts and expenditures on account thereof for the preceding six months. No money shall be expended for improvements, repairs, or extension of the waterworks system except upon recommendation of the water commissioner. The water commissioner shall perform such other duties as may be

prescribed by ordinance. The water commissioner shall be paid such salary as the council or board of trustees may by ordinance provide, and upon his or her written recommendation, the mayor and council or chairperson and board of trustees shall employ such laborers and clerks as may to them seem necessary. Neither the mayor nor any member of the council in a city of the second class shall be eligible to the office of water commissioner during the term for which he or she was elected. If the city or village involved owns public utilities other than the waterworks system, and the water commissioner has been designated by ordinance as the public works commissioner under the authority of section 17-541, then all provisions of this section in reference to a water commissioner shall apply to the public works commissioner.

Source: Laws 1881, c. 23, § 8, XV, p. 181; Laws 1885, c. 20, § 1, XV, p.172; Laws 1887, c. 12, § 1, XV, p. 300; Laws 1893, c. 8, § 1, p. 137; Laws 1903, c. 21, § 1, p. 253; Laws 1905, c. 30, § 1, p. 259; Laws 1907, c. 17, § 1, p. 129; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 274; Laws 1919, c. 48, § 1, p. 140; Laws 1919, c. 52, § 1, p. 154; Laws 1919, c. 46, § 2, p. 134; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 161; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 145; Laws 1937, c. 33, § 1, p. 159; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-543; Laws 1961, c. 51, § 2, p. 194; Laws 1983, LB 310, § 1.

17-544 Repealed. Laws 1947, c. 36, § 1.

17-545 Waterworks; additional tax; when authorized.

Every city of the second class and village in the State of Nebraska which owns its own water plant and a system of hydrants in connection therewith is hereby authorized and empowered to provide a fund upon the presentation to the city council or village board of a petition signed by sixty percent of the legal voters of the city or village, in addition to the general fund of such city or village, by making a levy at the time authorized by law, not to exceed two and one-tenth cents on each one hundred dollars upon the taxable value of all the taxable property of the city or village, for the purpose of paying the expense or aiding in paying the expense of maintaining such system of hydrants and pumping and supplying through them water for public purposes.

Source: Laws 1915, c. 217, § 1, p. 486; C.S.1922, § 4294; C.S.1929, § 17-443; R.S.1943, § 17-545; Laws 1953, c. 287, § 17, p. 939; Laws 1979, LB 187, § 54; Laws 1992, LB 719A, § 55.

17-546 Waterworks; additional tax; provision cumulative.

The right and power to provide the fund mentioned in section 17-545 for such purposes shall in no way prevent said cities of the second class and villages from providing in whole or in part for the expense of such hydrants, and of pumping and supplying through them water for public purposes, in any other manner now provided by law.

Source: Laws 1915, c. 217, § 2, p. 486; C.S.1922, § 4295; C.S.1929, § 17-444.

17-547 Animals running at large; regulation.

Second-class cities and villages shall have power to regulate the running at large of cattle, hogs, horses, mules, sheep, goats, dogs, and other animals, and to cause such as may be running at large to be impounded and sold to discharge the cost and penalties provided for the violation of such prohibitions, and the expense of impounding and keeping the same, and of such sale.

Source: Laws 1879, § 69, XVI, p. 214; Laws 1881, c. 23, § 8, XVI, p. 182; Laws 1885, c. 20, § 1, XVI, p. 173; Laws 1887, c. 12, § 1, XVI, p. 301; R.S.1913, § 5121; C.S.1922, § 4296; C.S.1929, § 17-445.

Where a village ordinance provides for impounding of animals running at large and fixes a certain fee which must be paid before the animal will be released, no lien is created for fee or charges permitted not specified in ordinance. Martin v. Foltz, 54 Neb. 162, 74 N.W. 418 (1898).

17-548 Pounds; establishment.

Second-class cities and villages shall have power to provide for the erection of all needful pens and pounds within or without the city limits, to appoint and compensate keepers thereof, and to establish and enforce rules governing the same.

Source: Laws 1879, § 69, XVII, p. 214; Laws 1881, c. 23, § 8, XVII, p. 182; Laws 1885, c. 20, § 1, XVII, p. 173; Laws 1887, c. 12, § 1, XVII, p. 301; R.S.1913, § 5122; C.S.1922, § 4297; C.S.1929, § 17-446.

17-549 Fire prevention; regulations.

Second-class cities and villages shall have power to regulate the construction of and order the suppression and cleaning of fireplaces, chimneys, stoves, stovepipes, ovens, boilers, kettles, forges or any apparatus used in any building, manufactory or business which may be dangerous in causing or promoting fires, and to prescribe the limits within which no dangerous or obnoxious and offensive business may be carried on.

Source: Laws 1879, § 69, XVIII, p. 214; Laws 1881, c. 23, § 8, XVIII, p. 182; Laws 1885, c. 20, § 1, XVIII, p. 173; Laws 1887, c. 12, § 1, XVIII, p. 301; R.S.1913, § 5123; C.S.1922, § 4298; C.S.1929, § 17-447.

17-550 Buildings; construction; regulation.

Second-class cities and villages shall have power to prescribe and alter limits within which no buildings shall be constructed except of brick, stone or other incombustible material, with fireproof roof; and, after such limits are established, no special permits shall be given for the erection of buildings of combustible material within said limits.

Source: Laws 1879, § 69, XIX, p. 214; Laws 1881, c. 23, § 8, XIX, p. 182; Laws 1885, c. 20, § 1, XIX, p. 173; Laws 1887, c. 12, § 1, XIX, p. 301; R.S.1913, § 5124; C.S.1922, § 4299; C.S.1929, § 17-448.

Injunction will issue against erection of buildings in violation of ordinance, if party shows that their erection will work special injury to him. Bangs v. Dworak, 75 Neb. 714, 106 N.W. 780 (1906).

17-551 Railways; depots; regulation.

Second-class cities and villages shall have power to regulate levees, depots, depot grounds, and places for storing freight and goods, and to provide for and

regulate the passage of railways through streets and public grounds of the city or village.

Source: Laws 1879, § 69, XX, p. 215; Laws 1881, c. 23, § 8, XX, p. 182; Laws 1885, c. 20, § 1, XX, p. 173; Laws 1887, c. 12, § 1, XX, p. 302; R.S.1913, § 5125; C.S.1922, § 4300; C.S.1929, § 17-449.

17-552 Railways; crossings; safety regulations.

Second-class cities and villages shall have power to regulate the crossing of railway tracks and to provide precautions and prescribe rules regulating the same, and to regulate the running of railway engines, cars or trucks within the limits of said city or village, and prescribe rules relating thereto, and to govern the speed thereof, and to make any other and further provisions, rules, and restrictions to prevent accidents at crossings and on the tracks of railways, and to prevent fires from engines.

Source: Laws 1879, § 69, XXI, p. 215; Laws 1881, c. 23, § 8, XXI, p. 183; Laws 1885, c. 20, § 1, XXI, p. 174; Laws 1887, c. 12, § 1, XXI, p. 302; R.S.1913, § 5126; C.S.1922, § 4301; C.S.1929, § 17-450.

An ordinance limiting the speed of trains, even though they carry United States mail, within the city limits to ten miles per hour is not void as imposing an unreasonable restraint on interstate commerce. Peterson v. State of Nebraska, 79 Neb. 132, 112 N.W. 306 (1907).

17-553 Repealed. Laws 1991, LB 356, § 36.

17-554 Fuel and feed; inspection and weighing.

Second-class cities and villages shall have power to provide for the inspection and weighing of hay, grain and coal, the measuring of wood and fuel to be used in the city or village, and to determine the place or places of the same, and to regulate and prescribe the place or places of exposing for sale hay, coal and wood; and to fix the fees and duties of persons authorized to perform the duties named in this section.

Source: Laws 1879, § 69, XXIII, p. 215; Laws 1881, c. 23, § 8, XXIII, p. 183; Laws 1885, c. 20, § 1, XXIII, p. 174; Laws 1887, c. 12, § 1, XXIII, p. 302; R.S.1913, § 5128; C.S.1922, § 4303; C.S.1929, § 17-452.

17-555 Streets and sidewalks; removal of obstructions; trees; declaration of nuisance; procedure.

Cities of the second class and villages shall have the power to remove all obstructions from the sidewalks, curbstones, gutters, and crosswalks at the expense of the person placing them there or of the city or village and to require and regulate the planting and protection of shade trees in and along the streets and the trimming and removing of such trees.

Cities of the second class or villages may by ordinance declare it to be a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees within the right-of-way of streets within the corporate limits of the city or village. Notice to abate and remove such nuisance and notice of the right to a hearing and the manner in which it may be requested shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. Within thirty days after the receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a

hearing or fails to comply with the order to abate and remove the nuisance, the city or village may have such work done and may levy and assess all or any portion of the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed.

Cities and villages shall have the power to regulate the building of bulkheads, cellar and basement ways, stairways, railways, windows, doorways, awnings, hitching posts and rails, lampposts, awning posts, all other structures projecting upon or over and adjoining, and all other excavations through and under the sidewalks in the city or village.

Source: Laws 1879, § 69, XXIV, p. 215; Laws 1881, c. 23, § 8, XXIV, p. 183; Laws 1885, c. 20, § 1, XXIV, p. 174; Laws 1887, c. 12, § 1, XXIV, p. 303; R.S.1913, § 5129; C.S.1922, § 4304; C.S.1929, § 17-453; R.S.1943, § 17-555; Laws 1994, LB 695, § 6.

City could not authorize use of part of street for private garage purposes. Michelsen v. Dwyer, 158 Neb. 427, 63 N.W.2d 513 (1954).

Where rubbish mixed with ice and snow had been permitted to accumulate and remain on public street, the question of the negligence of the village in failing to remove such obstruction is one for the jury. Pinches v. Village of Dickens, 127 Neb. 239, 254 N.W. 877 (1934).

City of second class has authority by ordinance to regulate and prevent use of sidewalks and streets and to remove obstructions therefrom, but such body cannot act arbitrarily and deny one citizen privileges which it grants to another. City of Pierce v. Schramm, 116 Neb. 263, 216 N.W. 809 (1927).

Where village permitted one party to occupy part of public street in operation of gasoline pump, it could not arbitrarily deny similar privilege to another party. Kenney v. Village of Dorchester, 101 Neb. 425, 163 N.W. 762 (1917).

City ordinance granting franchise to telephone company is not exclusive unless so indicated in ordinance. City of Plattsmouth v. Nebraska Tel. Co., 80 Neb. 460, 114 N.W. 588 (1908).

Abutting property owner is entitled to damages for destruction of trees planted along street in front of his property. Bronson v. Albion Telephone Co., 67 Neb. 111, 93 N.W. 201 (1903).

17-556 Public safety; firearms; explosives; riots; regulation.

Second-class cities and villages shall have power to prevent and restrain riots, routs, noises, disturbances or disorderly assemblages; to regulate, prevent, restrain or remove nuisances in residential parts of municipalities and to designate what shall be considered a nuisance; to regulate, punish, and prevent the discharge of firearms, rockets, powder, fireworks or any other dangerous combustible material in the streets, lots, grounds, alleys or about or in the vicinity of any buildings; to regulate, prevent and punish the carrying of concealed weapons; and to arrest, regulate, punish, fine or set at work on the streets, or elsewhere, all vagrants and persons found without means of support or some legitimate business.

Source: Laws 1879, § 69, XXV, p. 216; Laws 1881, c. 23, § 8, XXV, p. 184; Laws 1885, c. 20, § 1, XXV, p. 175; Laws 1887, c. 12, § 1, XXV, p. 303; R.S.1913, § 5130; C.S.1922, § 4305; C.S.1929, § 17-454.

Cited but not discussed. City of Syracuse v. Farmers Elevator, Inc., 182 Neb. 783, 157 N.W.2d 394 (1968).

Power to ''designate'' what may be a public nuisance does not give a municipality the right to prohibit house-to-house solicitation of sales of merchandise. Jewel Tea Company v. City of Geneva, 137 Neb. 768, 291 N.W. 664 (1940).

17-557 Streets; safety regulations; removal of snow, ice, and other encroachments.

Second-class cities and villages shall have power to prevent and remove all encroachments, including snow, ice, mud or other obstructions, into and upon all sidewalks, streets, avenues, alleys, and other city or village property, and to punish and prevent all horseracing, fast driving or riding in the streets, highways, alleys, bridges, or places in the city or village, and all games,

practices or amusements therein likely to result in damage to any person or property; and to regulate, prevent and punish the riding, driving or passing of horses, mules, cattle or other teams or any vehicle drawn thereby, over, upon or across sidewalks, or along any street of the city or village.

Source: Laws 1879, § 69, XXVI, p. 216; Laws 1881, c. 23, § 8, XXVI, p. 184; Laws 1885, c. 20, § 1, XXVI, p. 175; Laws 1887, c. 12, § 1, XXVI, p. 303; R.S.1913, § 5131; C.S.1922, § 4306; C.S.1929, § 17-455; R.S.1943, § 17-557; Laws 1947, c. 37, § 1, p. 148.

Municipality may be liable for injuries caused pedestrian by reason of the failure to remove rubbish mixed with ice and snow that has been allowed to accumulate in gutter on street. Pinches v. Village of Dickens, 127 Neb. 239, 254 N.W. 877 (1934).

City of second class has authority by ordinance to regulate use of sidewalks and streets and to remove obstructions therefrom, but such body cannot act arbitrarily and deny one citizen privileges which it grants to others. City of Pierce v. Schramm, 116 Neb. 263, 216 N.W. 809 (1927).

Village is required to exercise due care in keeping its streets free from defects, obstructions, or physical conditions immediately connected therewith. Chaney v. Village of Riverton, 104 Neb. 189, 177 N.W. 845 (1920).

Where the city has permitted a sidewalk to be maintained, it is liable for the defects in such walk and such duty is not affected by the fact that under its ordinance a narrower walk might have been erected. City of Chadron v. Glover, 43 Neb. 732, 62 N.W. 62 (1895); Kinney v. City of Tekamah, 30 Neb. 605, 46 N.W. 835 (1890); Foxworthy v. City of Hastings, 25 Neb. 133, 41 N.W. 132 (1888).

17-557.01 Sidewalks; removal of encroachments; cost of removal; special assessments; interest.

In case such abutting property owner refuses or neglects, after five days' notice by publication or, in place thereof, personal service of such notice, to remove all encroachments from sidewalks, as provided in section 17-557, the city or village through the proper officers may cause such encroachments to be removed, and the cost of removal paid out of the street fund. The council or board of trustees shall assess the cost of the notice and removal of the encroachment against such abutting property. Such special assessment shall be known as a special sidewalk assessment and, together with the cost of notice, shall be levied and collected as special taxes in addition to the general revenue taxes, and shall be subject to the same penalties and shall draw interest from the date of the assessment. Upon payment of the assessment, the same shall be credited to the street fund.

Source: Laws 1947, c. 37, § 2, p. 149; Laws 1969, c. 51, § 48, p. 302.

17-558 Streets; improving; vacating; abutting property; how treated.

(1) Cities of the second class and villages shall have power to open, widen, or otherwise improve or vacate any street, avenue, alley, or lane within the limits of the city or village and also to create, open, and improve any new street, avenue, alley, or lane. All damages sustained by the citizens of the city or village, or by the owners of the property therein, shall be ascertained in such manner as shall be provided by ordinance.

(2) Whenever any street, avenue, alley, or lane is vacated, the same shall revert to the owners of the abutting real estate, one-half on each side thereof, and become a part of such property, unless the city or village reserves title in the ordinance vacating such street or alley. If title is retained by the city or village, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the city or village.

(3) When a portion of a street, avenue, alley, or lane is vacated only on one side of the center thereof, the title to such land shall vest in the owner of the abutting property and become a part of such property unless the city or village

reserves title in the ordinance vacating a portion of such street or alley. If title is retained by the city or village, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the city or village.

(4) When the city or village vacates all or any portion of a street, avenue, alley, or lane, the city or village shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating ordinance or resolution with the register of deeds for the county in which the vacated property is located to be indexed against all affected lots.

(5) The title to property vacated pursuant to this section shall be subject to the following:

(a) There is reserved to the city or village the right to maintain, operate, repair, and renew public utilities existing at the time title to the property is vacated there; and

(b) There is reserved to the city or village, any public utilities, and any cable television systems the right to maintain, repair, renew, and operate water mains, gas mains, pole lines, conduits, electrical transmission lines, sound and signal transmission lines, and other similar services and equipment and appurtenances, including lateral connections or branch lines, above, on, or below the surface of the ground that are existing as valid easements at the time title to the property is vacated for the purposes of serving the general public or the abutting properties and to enter upon the premises to accomplish such purposes at any and all reasonable times.

Source: Laws 1879, § 69, XXVII, p. 216; Laws 1881, c. 23, § 8, XXVII, p. 184; Laws 1885, c. 20, § 1, XXVII, p. 175; Laws 1887, c. 12, § 1, XXVII, p. 304; R.S.1913, § 5132; C.S.1922, § 4307; C.S.1929, § 17-456; R.S.1943, § 17-558; Laws 1969, c. 58, § 3, p. 364; Laws 2001, LB 483, § 6; Laws 2005, LB 161, § 7.

Upon vacation, one-half of street on each side reverts to adjoining landowners. Dell v. City of Lincoln, 170 Neb. 176, 102 N.W.2d 62 (1960).

Possibility of reverter did not operate to deprive city of rentals from oil and gas produced from under its streets. Belgum v. City of Kimball, 163 Neb. 774, 81 N.W.2d 205 (1957).

On vacation of plat, streets and alleys revert to owners of adjacent property. Hoke v. Welsh, 162 Neb. 831, 77 N.W.2d 659 (1956).

Municipality may vacate any street, avenue, or alley. Barger v. City of Tekamah, 128 Neb. 805, 260 N.W. 366 (1935).

Cities of second class and villages, and not Railway Commission, have power and authority to open streets and to regulate and control railway crossings in such municipalities. Chicago, R. I. & P. Ry. Co. v. Nebraska State Railway Commission, 88 Neb. 239, 129 N.W. 539 (1911), rehearing denied, 89 Neb. 853, 132 N.W. 409 (1911).

This section granted village board unlimited power to vacate streets in every possible case and deprives county boards of jurisdiction to vacate such streets. Van Buren v. Village of Elmwood, 83 Neb. 596, 119 N.W. 959 (1909).

Where village board by ordinance vacates streets, etc., and declares such vacation to be expedient for the public's good, such acts have the effect of a judgment and only such irregularities as are jurisdictional will render the proceedings void. Enders v. Friday, 78 Neb. 510, 111 N.W. 140 (1907).

Where village board vacates street, avenue, alley, or lane, the land reverts to owners of adjacent real estate, one-half on each side thereof. Village of Bellevue v. Bellevue Improvement Co., 65 Neb. 52, 90 N.W. 1002 (1902).

17-559 Streets; offstreet parking; markets; public utilities; establishment; eminent domain; procedure.

Second-class cities and villages shall have power to create, open, widen, or extend any street, avenue, alley, offstreet parking area, or other public way, or annul, vacate, or discontinue the same; to take private property for public use for the purpose of erecting or establishing market houses, market places, parks, swimming pools, airports, gas systems, including distribution facilities, water systems, power plants, including electrical distribution facilities, sewer systems, or for any other needed public purpose; and to exercise the power of eminent

domain within or without the city or village limits for the purpose of establishing and operating power plants including electrical distribution facilities to supply such city or village with public utility service, and for sewerage purposes, water supply systems, or airports. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724, except as to property specifically excluded by section 76-703 and as to which sections 19-701 to 19-707 or the Municipal Natural Gas System Condemnation Act is applicable. For purposes of this section, electrical distribution facilities shall be located within the retail service area of such city or village as approved by and on file with the Nebraska Power Review Board, pursuant to Chapter 70, article 10.

Source: Laws 1879, § 69, XXVIII, p. 217; Laws 1881, c. 23, § 8, XXVIII, p. 185; Laws 1885, c. 20, § 1, XXVIII, p. 176; Laws 1887, c. 12, § 1, XXVIII, p. 304; Laws 1909, c. 23, § 1, p. 195; R.S.1913, § 5133; Laws 1919, c. 47, § 1, p. 136; C.S.1922, § 4308; Laws 1923, c. 137, § 1, p. 336; C.S.1929, § 17-457; R.S.1943, § 17-559; Laws 1951, c. 101, § 58, p. 473; Laws 1959, c. 50, § 1, p. 240; Laws 1982, LB 875, § 2; Laws 2002, LB 384, § 25.

Cross References

Municipal Natural Gas System Condemnation Act, see section 19-4624.

County and village jointly could not condemn under this section for airport. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

Where city acted irregularly in devoting streets to the location of city water wells, a purpose foreign to the original use, for a period of forty years, courts of equity have inherent power, independent of statute of limitations, to refuse to enjoin such use for wells. Barger v. City of Tekamah, 128 Neb. 805, 260 N.W. 366 (1935).

An ordinance, providing for the appointment of five freeholders to appraise damage in relation to opening and altering street, does not conform to statutory requirement for the election of five householders to assess damages for the vacation of the streets, and any action by the city under such ordinance does not bar abutting owners action for damages. Jones v. City of Aurora, 97 Neb. 825, 151 N.W. 958 (1915).

Where a part of a public street is vacated, only those whose property abuts upon the vacated street or who are cut off from access to street are entitled to damages. Lee v. City of McCook, 82 Neb. 26, 116 N.W. 955 (1908).

Municipality may grant the use of its streets to telephone company for its poles and lines, which use is a public one and not a special privilege. City of Plattsmouth v. Nebraska Telephone Co., 80 Neb. 460, 114 N.W. 588 (1908).

Authority is not conferred to condemn for a gas distribution system only. Village of Walthill v. Iowa Electric Light & Power Co., 125 F.Supp. 859 (D. Neb. 1954).

17-560 Borrowing power; pledges.

Second-class cities and villages shall have power to borrow money on the credit of the city, and pledge the credit, revenue and public property of the city for the payment thereof, when authorized in the manner hereinafter provided.

Source: Laws 1879, § 69, XXIX, p. 217; Laws 1881, c. 23, XXIX, p. 185; Laws 1885, c. 20, § 1, XXIX, p. 176; Laws 1887, c. 12, § 1, XXIX, p. 305; R.S.1913, § 5134; C.S.1922, § 4309; C.S.1929, § 17-458.

17-561 Railway tracks; lighting, city may require; cost; assessment.

Cities of the second class and villages shall have power, by ordinance, to require the lighting of the railroad track of any steam railway within the city or village in such manner as they shall prescribe; and in case the company owning or operating such railway shall fail to comply with such requirements, the council or board of trustees may cause the same to be done and may assess the expense thereof against such company; and the same shall constitute a lien upon any real estate belonging to such company and lying within such city or village, and may be collected in the same manner as taxes for general purposes.

Source: Laws 1911, c. 19, § 1, p. 136; R.S.1913, § 5135; C.S.1922, § 4310; C.S.1929, § 17-501.

17-562 Repealed. Laws 1980, LB 741, § 1.

17-563 Lots; drainage; weeds or litter; nuisance; noncompliance by owner; notice; assessment of cost; violation; penalty; civil action.

(1) Each city of the second class and village by ordinance may require lots or pieces of ground within the city or village to be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon. It may require the owner or occupant of any lot or piece of ground within the city or village to keep the lot or piece of ground and the adjoining streets and alleys free of any growth of twelve inches or more in height of weeds, grasses, or worthless vegetation, and it may prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or village.

(2) Any city of the second class and village may by ordinance declare it to be a nuisance to permit or maintain any growth of twelve inches or more in height of weeds, grasses, or worthless vegetation or to litter or cause litter to be deposited or remain thereon except in proper receptacles.

(3) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating such ordinance, be guilty of a Class V misdemeanor.

(4) Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. If notice by personal service or certified mail is unsuccessful, notice shall be given by publication in a newspaper of general circulation in the city or by conspicuously posting the notice on the lot or ground upon which the nuisance is to be abated and removed. Within five days after receipt of such notice or publication or posting, whichever is applicable, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or village or fails to comply with the order to abate and remove the nuisance, the city or village may have such work done. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city or village may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

(5) For purposes of this section:

(a) Litter includes, but is not limited to: (i) Trash, rubbish, refuse, garbage, paper, rags, and ashes; (ii) wood, plaster, cement, brick, or stone building rubble; (iii) grass, leaves, and worthless vegetation; (iv) offal and dead animals; and (v) any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk; and

(b) Weeds includes, but is not limited to, bindweed (Convolvulus arvensis), puncture vine (Tribulus terrestris), leafy spurge (Euphorbia esula), Canada thistle (Cirsium arvense), perennial peppergrass (Lepidium draba), Russian knapweed (Centaurea picris), Johnson grass (Sorghum halepense), nodding or musk thistle, quack grass (Agropyron repens), perennial sow thistle (Sonchus arvensis), horse nettle (Solanum carolinense), bull thistle (Cirsium lanceola-

tum), buckthorn (Rhamnus sp.) (tourn), hemp plant (Cannabis sativa), and ragweed (Ambrosiaceae).

Source: Laws 1879, § 71, p. 219; R.S.1913, § 5137; C.S.1922, § 4312; C.S.1929, § 17-503; R.S.1943, § 17-563; Laws 1991, LB 330, § 2; Laws 1995, LB 42, § 3; Laws 2004, LB 997, § 2.

17-563.01 Repealed. Laws 1991, LB 330, § 3.

17-564 Fines; actions to recover.

Fines may in all cases, and in addition to any other mode provided, be recovered by suit or action before a court of competent jurisdiction, in the name of the state. In any such suit or action, where pleading is necessary, it shall be sufficient to declare generally for the amount claimed to be due in respect to the violation of the ordinance, referring to its title and the date of its adoption or passage, and showing as nearly as may be the facts of the alleged violation.

Source: Laws 1879, § 72, p. 220; R.S.1913, § 5138; C.S.1922, § 4313; C.S.1929, § 17-504; R.S.1943, § 17-564; Laws 1972, LB 1032, § 108.

Police judge is authorized to collect fines by execution, or such fines may be recovered by suit. Cleaver v. Jenkins, 84 Neb. 565, 121 N.W. 992 (1909).

A prosecution for a violation of city ordinance, which act does not violate the criminal laws of state, is a civil action to recover a penalty, and is not a debt within the meaning of the constitutional provision prohibiting imprisonment for debt. Peterson v. State, 79 Neb. 132, 112 N.W. 306 (1907).

Although justice of the peace, city attorney, and chief of police acted in excess of jurisdiction in arresting plaintiff and in attaching and selling his hogs for payment of fine and costs, they were immune from civil rights action. Duba v. McIntyre, 501 F.2d 590 (8th Cir. 1974).

17-565 Fines; action to recover; limitation.

All suits for the recovery of any fine, and prosecutions for the commission of any offense made punishable as herein provided, shall be barred in one year after the commission of the offense for which the fine is sought to be recovered, or the prosecution is commenced.

Source: Laws 1879, § 74, p. 220; R.S.1913, § 5139; C.S.1922, § 4314; C.S.1929, § 17-505.

17-566 County jail; use by city; compensation.

Any city of the second class or village shall have the right to use the jail of the county for the confinement of such persons as may be imprisoned under the ordinances of such city or village. The city or village shall be liable to the county for the cost of keeping such prisoners as provided by section 47-120.

Source: Laws 1879, § 73, p. 220; R.S.1913, § 5140; C.S.1922, § 4315; C.S.1929, § 17-506; Laws 1937, c. 85, § 2, p. 283; C.S.Supp.,1941, § 17-506; R.S.1943, § 17-566; Laws 1961, c. 47, § 2, p. 184; Laws 1989, LB 4, § 2.

The 1969 amendments of sections 15-264 and 47-306 did not affect sections 16-252 and 17-566. City of Grand Island v. County of Hall, 196 Neb. 282, 242 N.W.2d 858 (1976).

Power of municipality to build a jail is necessarily implied and incident to the expressed power to enforce and collect fines, and such jail, properly constructed and suitably situated, is not per se a nuisance. Dunkin v. Blust, 83 Neb. 80, 119 N.W. 8 (1908).

City is not liable to the sheriff but to the county for cost of keeping its prisoners, and the county is liable to the sheriff therefor. County of Douglas v. Coburn, 34 Neb. 351, 51 N.W. 965 (1892).

17-567 Highways, streets, bridges; maintenance and control.

(1) The city council or board of trustees shall have the care, supervision, and control of all public highways, bridges, streets, alleys, public squares, and

commons within the city or village, and shall cause the same to be kept open and in repair, and free from nuisances.

(2) All public bridges exceeding sixty feet in length, over any stream crossing a state or county highway, shall be constructed and kept in repair by the county; *Provided*, when any city or village has constructed a bridge over sixty feet span, on any county or state highway within the corporate limits, and has incurred a debt for the same, the treasurer of the county in which such bridge is located shall pay to the treasurer of the city or village seventy-five percent of all bridge taxes collected in the city or village until such debt, and interest thereon, is fully paid.

(3) The council or trustees may appropriate a sum not exceeding five dollars per linear foot to aid in the construction of any county bridge within the limits of such city, or may appropriate a like sum to aid in the construction of any bridge contiguous to the city or village, on a highway leading to the same, or any bridge across any unnavigable river which divides the county, in which the city or village is located, from another state.

(4) No street or alley which shall hereafter be dedicated to public use, by the proprietor of ground in any city or village, shall be deemed a public street or alley, or be under the use or control of the city council or board of trustees, unless the dedication shall be accepted and confirmed by an ordinance especially passed for such purpose.

Source: Laws 1879, § 77, p. 221; R.S.1913, § 5141; C.S.1922, § 4316; C.S.1929, § 17-507; R.S.1943, § 17-567; Laws 1957, c. 30, § 2, p. 190; Laws 1959, c. 49, § 2, p. 238; Laws 1982, LB 909, § 6.

1. Duty imposed
2. Liability for neglect of duty
3. Regulation
4. Miscellaneous

1. Duty imposed

A village has right, under police power, to control a lateral irrigation ditch maintained through one of its streets. Thornton v. Kingrey, 100 Neb. 525, 160 N.W. 871 (1916), affirmed on rehearing, 101 Neb. 631, 164 N.W. 561 (1917).

Municipality is not required to keep its streets in an absolutely safe condition for public use, but it must use reasonable diligence to keep them in a reasonably safe condition. Walters v. Village of Exeter, 87 Neb. 125, 126 N.W. 868 (1910).

City council or board of trustees have the right to sell and dispose of streets and apply the money derived to legitimate municipal purposes. Krueger v. Jenkins, 59 Neb. 641, 81 N.W. 844 (1900).

Where snow has caused obstruction on the sidewalks, it is the duty of the city within a reasonable time thereafter to remove such obstruction. Foxworthy v. City of Hastings, 25 Neb. 133, 41 N.W. 132 (1888).

City is required to keep streets in repair and in a cleanly condition. Nebraska City v. Rathbone, 20 Neb. 288, 29 N.W. 920 (1886).

It is the duty of a municipality to protect its streets and alleys from unlawful occupancy and, in the discharge of this duty, it may maintain an action to test the legality of such occupancy. Ray v. Colby and Tenney, 5 Neb. Unof. 151, 97 N.W. 591 (1903).

2. Liability for neglect of duty

In an action for injuries from a defective sidewalk within city limits, a municipality could not escape liability by showing that the sidewalk was on the outskirts of the city. O'Loughlin v. City of Pawnee City, 88 Neb. 244, 129 N.W. 271 (1911).

Cities cannot delegate care and construction of sidewalks and streets and thus escape liability to persons injured by defects therein. Severa v. Village of Battle Creek, 88 Neb. 127, 129 N.W. 186 (1910).

Where suit is brought against city to recover damages for personal injuries, trial court may take judicial notice of the class of cities to which defendant belongs and the laws by which it is governed. Olmstead v. City of Red Cloud, 86 Neb. 528, 125 N.W. 1101 (1910).

City is liable for injuries caused by defective improvements in streets whether made by city or independent contractor. Armstrong v. City of Auburn, 84 Neb. 842, 122 N.W. 43 (1909).

City has exclusive control of streets and ample means to maintain them in a safe condition, and is liable for its failure so to do. Goodrich v. University Place, 80 Neb. 774, 115 N.W. 538 (1908).

City is not liable for defective crossing or walk from private property into street. City of McCook v. Parsons, 77 Neb. 132, 108 N.W. 167 (1906).

Where dedication of a plat is not accepted by ordinance, the streets and alleys of such plat are not under the control of the city, and the city is not liable for accidents in a street not so accepted. Village of Imperial v. Wright, 34 Neb. 732, 52 N.W. 374 (1892).

Until village or city by ordinance accepted and confirmed the dedication, such village or city will not be liable for accidents caused by its negligence in such streets. An ordinance requiring a railroad flagman or a signal at railroad crossings is applicable only to streets duly accepted by the municipality. Steward v. Chicago, B. & Q. Ry. Co., 284 F. 716 (8th Cir. 1922).

3. Regulation

The city is authorized to regulate or prohibit parking on its streets. There is no requirement that such prohibitions be made by ordinance. Morrow v. City of Ogallala, 213 Neb. 414, 329 N.W.2d 351 (1983).

Use of street for private garage purposes was a nuisance. Michelsen v. Dwyer, 158 Neb. 427, 63 N.W.2d 513 (1954).

Cities of the second class have power to enact ordinances that punish operation of motor vehicles by an intoxicated person on public street. Gembler v. City of Seward, 136 Neb. 196, 285 N.W. 542 (1939), modified on rehearing 136 Neb. 916, 288 N.W. 545 (1939).

Exhibition of a stallion on a street may be declared a nuisance. State v. Iams, 78 Neb. 678, 111 N.W. 604 (1907).

Unauthorized use of streets and alleys of municipal corporation constitutes public nuisance. Nebraska Tel. Co. v. Western Ind. Long Distance Tel. Co., 68 Neb. 772, 95 N.W. 18 (1903).

4. Miscellaneous

City may accept plat of an addition by using the area platted for streets and alleys. City of Ord v. Zlomke, 181 Neb. 573, 149 N.W.2d 747 (1967).

City has no power to pave and levy a special assessment to pay the cost of a public highway, though it is within the corporate limits, unless such highway is formally or impliedly dedicated to and accepted by the city. City of McCook v. Red Willow County, 133 Neb. 380, 275 N.W. 396 (1937).

Where property owner has permitted city to use street adjacent to his property for pump house and well for over forty years without objection, courts will refuse to enjoin city. Barger v. City of Tekamah, 128 Neb. 805, 260 N.W. 366 (1935).

Where street was closed by ordinance giving railroad company right to erect depot therein, and permanent improvements were thereafter made in street, mandamus will not lie to compel opening of street. State ex rel. Cox v. McIlravy, 105 Neb. 651, 181 N.W. 554 (1921).

Municipality under a duly acknowledged and recorded plat has such ownership in streets, alleys, etc., that an abutting owner cannot recover the value of the natural products grown thereon. Carroll v. Village of Elmwood, 88 Neb. 352, 129 N.W. 537 (1911).

''Bridge'', as used in this section, does not include the approaches thereto. City of Central City v. Marquis, 75 Neb. 233, 106 N.W. 221 (1905).

Bonds may be issued by city to build bridge beyond city limits. State ex rel. City of Columbus v. Babcock, 23 Neb. 179, 36 N.W. 474 (1888).

17-568 Employment of special engineer.

The mayor and council or board of trustees may, when they deem it expedient, employ a special engineer to make, or assist in making, any estimate necessary or to perform any other duty provided for in section 17-568.01. Any work executed by such special engineer shall have the same validity and serve in all respects as though executed by the city or village engineer.

Source: Laws 1879, § 20, p. 197; R.S.1913, § 5011; Laws 1921, c. 183, § 1, p. 695; C.S.1922, § 4180; Laws 1925, c. 51, § 1, p. 202; C.S.1929, § 17-119; Laws 1943, c. 25, § 1, p. 118; R.S.1943, § 17-568; Laws 1949, c. 25, § 1(1), p. 98; Laws 1951, c. 33, § 1, p. 133; Laws 1983, LB 304, § 3.

1. Estimate of expenditures
2. Miscellaneous

1. Estimate of expenditures

Estimate of proposed improvement and advertisement for bids are jurisdictional requirements. Musser v. Village of Rushville, 122 Neb. 128, 239 N.W. 642 (1931).

Where engineer submits an estimate stating ''cost not to exceed $16,500.00'', the failure of engineer to state a definite amount was at most an irregularity, and such estimate served the statutory purpose. Carr v. Fenstermacher, 119 Neb. 172, 228 N.W. 114 (1929).

The failure to state amount of estimate in published notice for bids will not vitiate the whole proceeding in a collateral attack. Wookey v. City of Alma, 118 Neb. 158, 223 N.W. 953 (1929).

Where municipality has no city engineer to make estimates, a city may secure such necessary services of a competent engineer. Howe v. City of Auburn, 110 Neb. 184, 193 N.W. 352 (1923); Schreifer v. City of Auburn, 110 Neb. 179, 193 N.W. 350 (1923); Diederich v. City of Red Cloud, 103 Neb. 688, 173 N.W. 698 (1919).

Estimate may be upon the unit plan, and may be based on the existing freight rates on material to be used with the provision that if such rates be advanced or lowered, the estimate should be correspondingly increased or lowered. State ex rel. City of McCook v. Marsh, 107 Neb. 637, 187 N.W. 84 (1922).

The provision that the estimate shall be published with the advertisement for bids and no contract shall be let for a price exceeding such estimate cannot be evaded by raising the estimate after the bids have been opened. Murphy v. City of Plattsmouth, 78 Neb. 163, 110 N.W. 749 (1907).

The power to bind a city by contract depends among other things upon an estimate having been first made and submitted to the council by the city engineer which provision is mandatory. City of Plattsmouth v. Murphy, 74 Neb. 749, 105 N.W. 293 (1905).

2. Miscellaneous

A city may ratify an irregular contract made with a special engineer, if the city had the power to contract in first instance. Morearty v. City of McCook, 117 Neb. 113, 219 N.W. 839 (1928).

This section does not apply to construction of temporary sidewalks on ungraded and unimproved streets. Whitla v. Connor, 114 Neb. 526, 208 N.W. 670 (1926).

17-568.01 City or village engineer; public works; prepare estimate of cost; board of public works; powers; contracts; procedure; city council or village board; powers and duties; public emergency.

(1) The city or village engineer shall, when requested by the mayor, city council, or village board, make estimates of the cost of labor and material which may be done or furnished by contract with the city or village and make all surveys, estimates, and calculations necessary to be made for the establishment of grades, the building of culverts, sewers, electric light system, waterworks, power plant, public heating system, bridges, curbing, and gutters, the improvement of streets, and the erection and repair of buildings and shall perform such other duties as the council or board may require. When a city has appointed a board of public works, and the mayor and city council have by ordinance so authorized, such board may utilize its own engineering staff and may hire consulting engineers for the design and installation of extensions and improvements of the works under the jurisdiction of the board of public works. Whenever the mayor and city council have authorized the same, the board of public works may purchase material and employ labor for the enlargement or improvement of the systems and works under the jurisdiction of the board.

(2) Except as provided in section 18-412.01, no contract for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, costing over twenty thousand dollars shall be made unless it is first approved by the city council or village board.

(3) Except as provided in section 18-412.01, before the city council or village board makes any contract in excess of twenty thousand dollars for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, an estimate of the cost shall be made by the city or village engineer and submitted to the council or village board. In advertising for bids as provided in subsections (4) and (6) of this section, the city council or village board may publish the amount of the estimate.

(4) Advertisements for bids shall be required for any contract costing over twenty thousand dollars entered into (a) for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, or (b) for the purchase of equipment used in the construction of such enlargement or general improvements.

(5) A municipal electric utility may enter into a contract for the enlargement or improvement of the electric system or for the purchase of equipment used for such enlargement or improvement without advertising for bids if the price is: (a) Twenty thousand dollars or less; (b) forty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of one million dollars; (c) sixty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of five million dollars; or (d) eighty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of ten million dollars.

(6) The advertisement provided for in subsections (3) and (4) of this section shall be published at least seven days prior to the bid closing in a legal newspaper published in or of general circulation in the city or village and, if there is no legal newspaper published in or of general circulation in such city

or village, then in some newspaper of general circulation published in the county wherein such city or village is located, and if there is no legal newspaper of general circulation published in the county wherein such city or village is located then in a newspaper, designated by the county board, having a general circulation within the county where bids are required, and if no newspaper is published in the city, village, or county, or if no newspaper has general circulation in the county, then by posting a written or printed copy thereof in each of three public places in the city or village at least seven days prior to the bid closing. In case of a public emergency resulting from infectious or contagious diseases, destructive windstorms, floods, snow, war, or an exigency or pressing necessity or unforeseen need calling for immediate action or remedy to prevent a serious loss of, or serious injury or damage to, life, health, or property, estimates of costs and advertising for bids may be waived in the emergency ordinance authorized by section 17-613 when adopted by a three-fourths vote of the council or board of trustees and entered of record.

(7) If, after advertising for bids as provided in subsections (3), (4), and (6) of this section, the city council or village board receives fewer than two bids on a contract or if the bids received by the city council or village board contain a price which exceeds the estimated cost, the mayor and the city council or village board may negotiate a contract in an attempt to complete the proposed enlargement or general improvements at a cost commensurate with the estimate given.

(8) If the materials are of such a nature that, in the opinion of the manufacturer and with the concurrence of the city council, village board, or board of public works, no cost can be estimated until the materials have been manufactured or assembled to the specific qualifications of the purchasing municipality, the city council, village board, or board of public works may authorize the manufacture and assemblage of such materials and may thereafter approve the estimated cost expenditure when it is provided by the manufacturer.

Source: Laws 1879, § 20, p. 197; R.S.1913, § 5011; Laws 1921, c. 183, § 1, p. 695; C.S.1922, § 4180; Laws 1925, c. 51, § 1, p. 202; C.S.1929, § 17-119; Laws 1943, c. 25, § 1, p. 118; R.S.1943, § 17-568; Laws 1949, c. 25, § 1(2), p. 98; Laws 1951, c. 34, § 1, p. 134; Laws 1957, c. 32, § 1, p. 195; Laws 1959, c. 61, § 2, p. 277; Laws 1969, c. 78, § 2, p. 409; Laws 1975, LB 171, § 2; Laws 1979, LB 356, § 2; Laws 1983, LB 304, § 4; Laws 1984, LB 540, § 8; Laws 1997, LB 238, § 3.

Engineer's estimate of cost of proposed improvement under this section is jurisdictional. Campbell v. City of Ogallala, 183 Neb. 238, 159 N.W.2d 574 (1968).

Engineer's estimate of cost of proposed sidewalk is jurisdictional, and must be submitted to and approved by council before it may make contract for laying the same. Moss v. City of Fairbury, 66 Neb. 671, 92 N.W. 721 (1902).

Council has no power to contract for grading until it shall have enacted an ordinance therefor after an estimate of the cost has been made by the city engineer. Fulton v. City of Lincoln, 9 Neb. 358, 2 N.W. 724 (1879).

17-568.02 Municipal bidding procedure; waiver; when.

Any municipal bidding procedure may be waived by the city council, village board, or board of public works (1) when materials or equipment are purchased at the same price and from the same seller as materials or equipment which have formerly been obtained pursuant to the state bidding procedure in sections 81-145 to 81-162 or (2) when the contract is negotiated directly with a sheltered workshop pursuant to section 48-1503.

Source: Laws 1997, LB 238, § 4.

17-569 Abandoned real estate; sale; ordinance.

Before any sale of abandoned real estate is made the council or board of trustees shall by ordinance set forth the date of the purchase, gift or condemnation, a description of the property, the purpose for which the same was acquired, the abandonment of the same, and that a sale is deemed expedient; and shall fix the time, place, terms, and manner of sale and shall reserve the right to reject any and all bids.

Source: Laws 1911, c. 17, § 2, p. 134; R.S.1913, § 5178; C.S.1922, § 4365; C.S.1929, § 17-563.

17-570 Abandoned real estate; sale; notice.

No sale shall be had until at least thirty days' notice shall have been given by publication in some newspaper published in the city or village or, in case no newspaper is published in the city or village, by posting notices in four public places.

Source: Laws 1911, c. 17, § 3, p. 134; R.S.1913, § 5179; C.S.1922, § 4366; C.S.1929, § 17-564.

17-571 Abandoned real estate; sale; sealed bids; deed.

The sale shall be by sealed bids; and upon approval of the sale by a two-thirds vote of the council the mayor or chairman of the board of trustees shall, in the name of the city or village, execute and deliver a deed to the purchaser, which deed shall be attested by the city clerk; and the seal of the city shall be thereon impressed.

Source: Laws 1911, c. 17, § 4, p. 134; R.S.1913, § 5180; C.S.1922, § 4367; C.S.1929, § 17-565.

17-572 Loans to students; conditions.

Cities of the second class and villages may contract with a person including such person's parent or guardian if such person is a minor to loan money to such person while such person pursues a course of study at an accredited college or university leading to a degree of Doctor of Medicine or Doctor of Dental Surgery in consideration for such person's promise to practice medicine or dentistry in such city or village and repay such city or village for such money loaned during such person's study after such person shall have become established in his practice, and upon such other terms and conditions as the council or board of such city or village may determine are warranted in the premises. If such person shall discontinue his course of study before attaining such degree, or fail to practice in such city or village after attaining such degree and a license to practice medicine or dentistry, such city or village may pursue any remedy it may have against such person or his parent or guardian as in any other commercial transaction.

Source: Laws 1971, LB 497, § 1.

ARTICLE 6

ELECTIONS, OFFICERS, ORDINANCES

(a) ELECTIONS

Section
17-601. Repealed. Laws 1969, c. 257, § 44.

Section
17-601.01. Caucus; when held; notice.
17-601.02. Caucus; notice to village clerk; contents.
17-601.03. Caucus; additional filings.
17-602. Registered voters; qualifications.
17-603. Officers; canvass; certificates of election; failure to qualify, effect.

(b) OFFICERS

17-604. Officers; powers, duties, and compensation; regulate by ordinance; bond or insurance; premium.
17-605. Clerk; duties.
17-606. Treasurer; duties; failure to file account; penalty.
17-607. Treasurer; depositories; qualification; bond; exemption of treasurer from liability; conflict of interest.
17-608. Treasurer; surplus funds; investments authorized; interest.
17-609. Treasurer; utility funds; retirement of bonds or warrants.
17-610. City attorney; duties.
17-611. Officer; extra compensation prohibited.
17-612. Elective officers, salary; increase during term of office prohibited; exception.

(c) ORDINANCES

17-613. Ordinances; style; publication; proof.
17-614. Ordinances; how enacted; title.
17-615. Ordinances; passage; rules and regulations; proof.
17-616. Ordinances; contracts; appointments; vote; record.

(a) ELECTIONS

17-601 Repealed. Laws 1969, c. 257, § 44.

17-601.01 Caucus; when held; notice.

In any village the governing body may, by ordinance, call a caucus for the purpose of nomination of candidates for offices to be filled in the village election. Such caucus shall be held at least ten days before the filing deadline for such election, and the governing body calling the caucus shall publish notice of such caucus in at least one newspaper of general circulation in the county at least once each week for two consecutive weeks before such caucus.

Source: Laws 1971, LB 432, § 1; Laws 1972, LB 1047, § 2; Laws 1993, LB 348, § 2.

17-601.02 Caucus; notice to village clerk; contents.

The chairperson of the caucus at which candidates are nominated shall notify in writing the village clerk of the candidates so nominated, not later than two days following the caucus. The village clerk shall then notify the persons so nominated of their nomination, such notification to take place not later than five days after such caucus. No candidate so nominated shall have his or her name placed upon the ballot unless, not more than ten days after the holding of such caucus, he or she files with the village clerk a written statement accepting the nomination of the caucus and pays the filing fee, if any, for the office for which he or she was nominated.

Source: Laws 1971, LB 432, § 2; Laws 1993, LB 348, § 3.

17-601.03 Caucus; additional filings.

The provisions of sections 17-601.01 to 17-601.03 shall not preclude in any manner any person from filing for the offices to which such sections are applicable, either by direct filing or by petition.

Source: Laws 1971, LB 432, § 3.

17-602 Registered voters; qualifications.

All registered voters residing within the limits of any city of the second class or village on or before election day shall be entitled to vote at all city and village elections.

Source: Laws 1879, § 61, p. 208; R.S.1913, § 5144; C.S.1922, § 4319; C.S.1929, § 17-510; R.S.1943, § 17-602; Laws 1963, c. 74, § 1, p. 277; Laws 1973, LB 559, § 8; Laws 1994, LB 76, § 497.

17-603 Officers; canvass; certificates of election; failure to qualify, effect.

At a meeting of the council of a city of the second class, or the board of trustees of a village, on the first Monday after any city or village election, as the case may be, the returns, including returns for the election of members of the school board, shall be canvassed, and the city council or board of trustees, as the case may be, shall cause the municipal clerk to make out and deliver certificates of election, under the seal of the city or village, to the persons found to be elected. A neglect of any such elected officer to qualify within ten days after the delivery of such certificate shall be deemed a refusal to accept the office to which he or she may have been elected.

Source: Laws 1879, § 62, p. 208; R.S.1913, § 5145; C.S.1922, § 4320; C.S.1929, § 17-511; R.S.1943, § 17-603; Laws 1951, c. 35, § 1, p. 136; Laws 1959, c. 60, § 56, p. 273; Laws 1994, LB 76, § 498.

Mandamus will compel canvassing board to declare the result of the election and issue certificate to successful parties. Moore v. Keck, 86 Neb. 694, 126 N.W. 388 (1910); Hotchkiss v. Keck, 86 Neb. 322, 125 N.W. 509 (1910).

(b) OFFICERS

17-604 Officers; powers, duties, and compensation; regulate by ordinance; bond or insurance; premium.

The city or village may enact ordinances or bylaws to regulate and prescribe the powers, duties, and compensation of officers not herein provided for, and to require from all officers and servants, elected or appointed, bonds and security or evidence of equivalent insurance for the faithful performance of their duties. The city or village may pay the premium for such bonds or insurance coverage.

Source: Laws 1879, § 69, XIII, p. 214; Laws 1881, c. 23, § 8, XIII, p. 176; Laws 1885, c. 20, § 1, XIII, p. 166; Laws 1887, c. 12, § 1, XIII, p. 295; R.S.1913, § 5146; C.S.1922, § 4321; C.S.1929, § 17-512; R.S.1943, § 17-604; Laws 1965, c. 68, § 1, p. 288; Laws 2007, LB347, § 12.

17-605 Clerk; duties.

The city or village clerk shall have the custody of all laws and ordinances, and shall keep a correct journal of the proceedings of the council or board of trustees; *Provided,* that after the period of time specified by the State Records Administrator pursuant to sections 84-1201 to 84-1220, the city or village clerk

may transfer such journal of the proceedings of the council or board of trustees to the State Archives of the Nebraska State Historical Society, for permanent preservation. He shall also keep a record of all outstanding bonds against the city or village, showing the number and amount of each, for and to whom the said bonds were issued, and when any bonds are purchased or paid or canceled said record shall show the fact; and in his annual report he shall describe particularly the bonds issued and sold during the year, and the terms of sale, with every item of expense thereof. He shall also perform such other duties as may be required by the ordinances of the city.

Source: Laws 1879, § 63, p. 208; R.S.1913, § 5147; C.S.1922, § 4322; C.S.1929, § 17-513; R.S.1943, § 17-605; Laws 1973, LB 224, § 5.

City has power to appropriate money for an audit of the accounts of the clerk. Campbell Co. v. City of Harvard, 123 Neb. 539, 243 N.W. 653 (1932).

This section does not specifically require the recording of reading of city ordinances. Hull v. City of Humboldt, 107 Neb. 326, 186 N.W. 78 (1921).

17-606 Treasurer; duties; failure to file account; penalty.

The treasurer of each city and village shall be the custodian of all money belonging to the corporation. He or she shall keep a separate account of each fund or appropriation and the debts and credits belonging thereto. He or she shall give every person paying money into the treasury a receipt therefor, specifying the date of payment and on what account paid. He or she shall also file copies of such receipts with his or her monthly reports, and he or she shall, at the end of every month, and as often as may be required, render an account to the city council or board of trustees, under oath, showing the state of the treasury at the date of such account and the balance of money in the treasury. He or she shall also accompany such accounts with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him or her, which warrants, with any and all vouchers held by him or her, shall be filed with his or her account in the clerk's office. If the treasurer fails to render his or her account within twenty days after the end of the month, or by a later date established by the governing body, the mayor in a city of the second class or the chairperson of the village board with the advice and consent of the trustees may use this failure as cause to remove the treasurer from office.

Source: Laws 1879, § 64, p. 209; R.S.1913, § 5148; C.S.1922, § 4323; C.S.1929, § 17-514; R.S.1943, § 17-606; Laws 2005, LB 528, § 2.

Duties of city treasurer were clerical and not such as to preclude participation in proceedings for bond election. Inslee v. City of Bridgeport, 153 Neb. 559, 45 N.W.2d 590 (1951).

Designation of depository and the furnishing of depository bond does not relieve treasurer from duty of exercising reasonable prudence in protection of funds of the municipality. Village of Hampton v. Gausman, 136 Neb. 550, 286 N.W. 757 (1939).

City treasurer, as custodian of city funds, is required to account monthly to the council, which requirement implies the power of the city to contract and to pay for an audit of his accounts. Campbell Co. v. City of Harvard, 123 Neb. 539, 243 N.W. 653 (1932).

Power to remove city treasurer for any reason cannot be exercised until specific charges are preferred against such treasurer, notice is given him thereof, and he has had an opportunity to be heard. State ex rel. Ballmer v. Strever, 93 Neb. 762, 141 N.W. 820 (1913).

Money paid to village treasurer for liquor license as required by municipal ordinance is received by such treasurer in his official capacity and his bondsmen are liable if he fails to account therefor. Hrabak v. Village of Dodge, 62 Neb. 591, 87 N.W. 358 (1901).

17-607 Treasurer; depositories; qualification; bond; exemption of treasurer from liability; conflict of interest.

(1) The treasurer of a city of the second class or village shall deposit, and at all times keep on deposit, for safekeeping, in banks, capital stock financial institutions, or qualifying mutual financial institutions of approved and responsible standing, all money collected, received, or held by him or her as city or

village treasurer. Such deposits shall be subject to all regulations imposed by law or adopted by the city council or board of trustees for the receiving and holding thereof. The fact that a stockholder, director, or other officer of such bank, capital stock financial institution, or qualifying mutual financial institution is also serving as mayor, as a member of the city council, as a member of the board of trustees, as a member of a board of public works, or as any other officer of such municipality shall not disqualify such bank, capital stock financial institution, or qualifying mutual financial institution from acting as a depository for such municipal funds. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

(2) The council or board of trustees shall require from all banks, capital stock financial institutions, or qualifying mutual financial institutions (a) a bond in such penal sum as may be the maximum amount on deposit at any time less the amount insured by the Federal Deposit Insurance Corporation or, in lieu thereof, (b) security given as provided in the Public Funds Deposit Security Act, to secure the payment of all such deposits and accretions. The council or board shall approve such bond or giving of security. The city treasurer or village treasurer shall not be liable for any loss of any money sustained by reason of the failure of any such depository so designated and approved.

Source: Laws 1879, § 65, p. 209; R.S.1913, § 5149; Laws 1921, c. 304, § 1, p. 961; C.S.1922, § 4324; Laws 1927, c. 38, § 1, p. 168; Laws 1929, c. 45, § 1, p. 193; C.S.1929, § 17-515; Laws 1931, c. 33, § 1, p. 124; Laws 1935, c. 140, § 2, p. 515; Laws 1937, c. 31, § 1, p. 155; C.S.Supp.,1941, § 17-515; Laws 1943, c. 27, § 2(1), p. 121; R.S.1943, § 17-607; Laws 1957, c. 54, § 3, p. 264; Laws 1989, LB 33, § 22; Laws 1992, LB 757, § 19; Laws 1996, LB 1274, § 22; Laws 2001, LB 362, § 24; Laws 2003, LB 175, § 1.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

A municipal treasurer is required to deposit its funds in a bank selected by the village board. Village of Hampton v. Gausman, 136 Neb. 550, 286 N.W. 757 (1939).

Where village treasurer deposits funds in bank duly designated by board as its depository and, after insolvency of such bank, sureties confess their liability and to recoup part of their loss sold bonds pledged with them by bank, such sureties are not entitled to a preferred claim against assets of such bank for balance of their loss. Shumway v. Department of Banking, 131 Neb. 246, 267 N.W. 469 (1936).

A village treasurer is not authorized to deposit village funds in a bank not designated by board of trustees as a depository. Village of Overton v. Nagel, 128 Neb. 264, 258 N.W. 461 (1935); State ex rel. Sorensen v. Bank of Otoe, 125 Neb. 414, 250 N.W. 547 (1933); State ex rel. Sorensen v. Bank of Otoe, 125 Neb. 383, 250 N.W. 254 (1933).

Deposit of funds in duly designated depository by city treasurer, where he received them for the specific purpose of investing them in securities designated by ordinance, does not make such funds trust funds. State ex rel. Sorensen v. Fidelity State Bank, 127 Neb. 529, 255 N.W. 781 (1934).

Where a bank, not designated as a depository by village board, accepts village funds from its treasurer, with knowledge of their character, such bank holds such funds as trustee, and on bank's insolvency, the village is entitled to a preferred claim therefor. State ex rel. Sorensen v. Plateau State Bank, 126 Neb. 407, 253 N.W. 433 (1934).

Designation of bank as a depository does not relieve treasurer and his bondsmen from liability for funds of municipality lost in bank failure, where treasurer was officer, director, and stockholder of the bank and knew bank was unsafe. City of Cozad v. Thompson, 126 Neb. 79, 252 N.W. 606 (1934).

Treasurer is liable on his official bond for loss of funds deposited by him in a bank not duly designated as a depository. City of South Sioux City v. Mullins, 125 Neb. 410, 250 N.W. 549 (1933).

City treasurer is bound to deposit city money in bank which has made application and been accepted as city depository by the city council. Luikart v. City of Aurora, 125 Neb. 263, 249 N.W. 590 (1933).

17-608 Treasurer; surplus funds; investments authorized; interest.

When the treasurer of any such city or village holds funds of any such city or village in excess of the amount required for maintenance or set aside for betterments and improvements, the mayor and council or the board of trustees

may, by resolution, direct and authorize said treasurer to invest said surplus funds in the outstanding bonds or registered warrants of said city or village, bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration, or in interest-bearing bonds or the obligations of the United States. The interest on such bonds or warrants shall be credited to the fund out of which said bonds or warrants were purchased.

Source: Laws 1927, c. 38, § 1, p. 169; Laws 1929, c. 45, § 1, p. 193; C.S.1929, § 17-515; Laws 1931, c. 33, § 1, p. 125; Laws 1935, c. 140, § 2, p. 516; Laws 1937, c. 31, § 1, p. 155; C.S.Supp.,1941, § 17-515; Laws 1943, c. 27, § 2(2), p. 122; R.S.1943, § 17-608; Laws 1959, c. 263, § 6, p. 927.

17-609 Treasurer; utility funds; retirement of bonds or warrants.

The mayor and council or board of trustees may, by resolution, direct and authorize the treasurer to dispose of the surplus electric light, water, or gas funds, or the funds arising from the sale of electric light, water, or natural gas distribution properties, by the payment of outstanding electric light, water, or gas distribution bonds or water warrants then due. The excess, if any, after such payments, may be transferred to the general fund of such city or village.

Source: Laws 1929, c. 45, § 1, p. 194; C.S.1929, § 17-515; Laws 1931, c. 33, § 1, p. 125; Laws 1935, c. 140, § 2, p. 516; Laws 1937, c. 31, § 1, p. 156; C.S.Supp.,1941, § 17-515; Laws 1943, c. 27, § 2(3), p. 122; R.S.1943, § 17-609; Laws 1967, c. 77, § 1, p. 247.

17-610 City attorney; duties.

The city or village attorney shall be the legal advisor of the council or board of trustees. He shall commence, prosecute, and defend all suits and actions necessary to be commenced, prosecuted or defended on behalf of the corporations, or that may be ordered by the council or board of trustees. When requested, he shall attend meetings of the council or board and give them his opinion upon any matters submitted to him, either orally or in writing, as may be required. He shall draft or review for legal correctness ordinances, contracts, franchises and other instruments as may be required, and he shall perform such other duties as may be imposed upon him by general law or ordinance. The governing body of the city or village shall have the right to pay the city or village attorney compensation for legal services performed by him for it on such terms as the governing body and attorney may agree, and to employ additional legal assistance and to pay for such legal assistance out of the funds of the city or village.

Source: Laws 1879, § 67, p. 210; R.S.1913, § 5150; C.S.1922, § 4325; C.S.1929, § 17-516; R.S.1943, § 17-610; Laws 1969, c. 94, § 1, p. 461.

City attorney is city's legal advisor, and as such he is required to commence, prosecute, and defend all suits on behalf of the city. Darnell v. City of Broken Bow, 139 Neb. 844, 299 N.W. 274 (1941).

City attorney is the legal advisor of the council, and has the duty to prosecute or defend all actions in which it is a party. Meeske v. Baumann, 122 Neb. 786, 241 N.W. 550 (1932), 83 A.L.R. 131 (1932).

17-611 Officer; extra compensation prohibited.

No officer shall receive any pay or perquisites from the city other than his or her salary. Neither the city council nor board of trustees shall pay or appropri-

ate any money or other valuable thing to any person not an officer for the performance of any act, service, or duty, the doing or performance of which shall come within the proper scope of the duties of any officer of such corporation.

Source: Laws 1879, § 68, p. 210; R.S.1913, § 5151; C.S.1922, § 4326; C.S.1929, § 17-517; R.S.1943, § 17-611; Laws 1957, c. 38, § 3, p. 208; Laws 1959, c. 62, § 2, p. 280; Laws 1961, c. 283, § 3, p. 831; Laws 1971, LB 494, § 4; Laws 1971, LB 549, § 1; Laws 1983, LB 370, § 8.

Payments made by village under void contract may be recovered. Heese v. Wenke, 161 Neb. 311, 73 N.W.2d 223 (1955).

Under former law, interest of members of council in other contracts did not invalidate ordinance. Freeman v. City of Neligh, 155 Neb. 651, 53 N.W.2d 67 (1952).

An officer who has made a contract with a city or village for salary, additional to that provided by law, cannot recover in quantum meruit. Neisius v. Henry, 142 Neb. 29, 5 N.W.2d 291 (1942).

Where, under this section, the making of a contract is prohibited, a recovery quantum meruit cannot be had. Village of Bellevue v. Sterba, 140 Neb. 744, 1 N.W.2d 820 (1942).

Where a city attorney resigns, but still acts as legal advisor to the city and is allowed compensation at the rate provided by ordinance for salary of city attorney, he remains de facto city attorney and cannot enter into legal contract with city for collection of taxes. Darnell v. City of Broken Bow, 139 Neb. 844, 299 N.W. 274 (1941).

City, having a regular salaried attorney, is not for that reason prevented from employing a special attorney when the city attorney is absent, ill, or disqualified. Meeske v. Baumann, 122 Neb. 786, 241 N.W. 550 (1932), 83 A.L.R. 131 (1932).

17-612 Elective officers, salary; increase during term of office prohibited; exception.

The emoluments of any elective officer shall not be increased or diminished during the term for which he shall have been elected, except when there has been a combination and merger of offices as provided by sections 17-108.02 and 17-209.02, except that when there are officers elected to the council, or a board or commission having more than one member and the terms of one or more members commence and end at different times, the compensation of all members of such council, board or commission may be increased or diminished at the beginning of the full term of any member thereof. No person who shall have resigned or vacated any office shall be eligible to the same during the time for which he was elected if during the same time the emoluments thereof were increased.

Source: Laws 1879, § 75, p. 220; R.S.1913, § 5152; C.S.1922, § 4327; C.S.1929, § 17-518; R.S.1943, § 17-612; Laws 1945, c. 25, § 3, p. 136; Laws 1969, c. 89, § 3, p. 452; Laws 1972, LB 942, § 1.

City attorney who resigns cannot be rehired by council to perform same duties under the designation of ''special counsel'' at an increase in pay. Darnell v. City of Broken Bow, 139 Neb. 844, 299 N.W. 274 (1941).

When, at time of election of city officers, no ordinance had fixed their salaries, this section does not prevent the city council and mayor from fixing such salaries thereafter by ordinance. Wheelock v. McDowell, 20 Neb. 160, 29 N.W. 291 (1886); State ex rel. Wagner v. McDowell, 19 Neb. 442, 27 N.W. 433 (1886).

(c) ORDINANCES

17-613 Ordinances; style; publication; proof.

The style of all ordinances shall be: Be it ordained by the mayor and council of the city of ....., or the chairman and board of trustees of the village of ..... . All ordinances of a general nature shall, before they take effect, be published, within fifteen days after they are passed, (1) in some newspaper published in such city or village, but if no paper is published in the city or village, then by posting a written or printed copy thereof in each of three public places in the city or village, or (2) by publishing the same in book or pamphlet form;

Provided, in case of riot, infectious or contagious diseases, or other impending danger, failure of public utility, or any other emergency requiring its immediate operation, such ordinance shall take effect upon the proclamation of the mayor or chairman of the board of trustees, posted in at least three of the most public places in the city or village. Such emergency ordinance shall recite the emergency and be passed by a three-fourths vote of the council or board of trustees, and entered of record on the clerk's minutes. The passage, approval, and publication or posting of all ordinances shall be sufficiently proved by a certificate under seal of the city or village from the clerk thereof, showing that such ordinance was passed and approved, and when and in what paper the same was published, or when and by whom and where the same was posted. When ordinances are printed in book or pamphlet form, purporting to be published by authority of the board of trustees or city council, the same need not be otherwise published, and such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances as of the dates mentioned in such book or pamphlet, in all courts without further proof.

Source: Laws 1879, § 59, p. 207; Laws 1881, c. 23, § 7, p. 171; R.S.1913, § 5153; C.S.1922, § 4328; C.S.1929, § 17-519; R.S.1943, § 17-613; Laws 1951, c. 36, § 1, p. 137; Laws 1969, c. 95, § 1, p. 462; Laws 1971, LB 282, § 2.

Cross References

For other provisions applicable to ordinances, see sections 18-131, 18-132, 18-1724, and 19-3701.

Generally, ordinances do not go into effect until published. City of Milford v. Schmidt, 175 Neb. 12, 120 N.W.2d 262 (1963).

Ordinances of a general nature are required to be published. Chicago, St. P., M. & O. Ry. Co. v. City of Randolph, 163 Neb. 687, 81 N.W.2d 159 (1957).

Paving ordinance was properly published. Freeman v. City of Neligh, 155 Neb. 651, 53 N.W.2d 67 (1952).

Where an ordinance was printed in pamphlet form by the village, it was regularly published, and a village cannot question its validity on the ground that it was not validly adopted. Village of Deshler v. Southern Nebraska Power Co., 133 Neb. 778, 277 N.W. 77 (1938).

There is no requirement that the newspaper be printed within the city and, where there is no paper printed in the city, if an ordinance is published in a newspaper printed elsewhere and circulated generally in the city to local subscribers, the publication is sufficient. Hadlock v. Tucker, 93 Neb. 510, 141 N.W. 192 (1913).

Certificate of village clerk, attached to an ordinance, attested by official seal, stating when passed and approved, and when and in what paper published, is sufficient. Bailey v. State, 30 Neb. 855, 47 N.W. 208 (1890).

Ordinance calling election became effective when publication was complete. Central Electric & Gas Co. v. City of Stromsburg, 289 F.2d 217 (8th Cir. 1961).

17-614 Ordinances; how enacted; title.

(1) All ordinances and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the council or board of trustees. Ordinances of a general or permanent nature shall be read by title on three different days unless three-fourths of the council or board vote to suspend this requirement, except that such requirement shall not be suspended for any ordinance for the annexation of territory. In case such requirement is suspended, the ordinances shall be read by title and then moved for final passage. Three-fourths of the council or board may require a reading of any such ordinance in full before enactment under either procedure set out in this section.

(2) Ordinances shall contain no subject which is not clearly expressed in the title, and, except as provided in section 19-915, no ordinance or section thereof shall be revised or amended unless the new ordinance contains the entire ordinance or section as revised or amended and the ordinance or section so amended is repealed, except that:

(a) For an ordinance revising all the ordinances of the city or village, the title need only state that the ordinance revises all the ordinances of the city or

village. Under such title all the ordinances may be revised in sections and chapters or otherwise, may be corrected, added to, and any part suppressed, and may be repealed with or without a saving clause as to the whole or any part without other title; and

(b) For an ordinance used solely to revise ordinances or code sections or to enact new ordinances or code sections in order to adopt statutory changes made by the Legislature which are specific and mandatory and bring the ordinances or code sections into conformance with state law, the title need only state that the ordinance revises those ordinances or code sections affected by or enacts ordinances or code sections generated by legislative changes. Under such title, all such ordinances or code sections may be revised, repealed, or enacted in sections and chapters or otherwise by a single ordinance without other title.

Source: Laws 1879, § 79, p. 223; R.S.1913, § 5154; C.S.1922, § 4329; Laws 1929, c. 47, § 1, p. 202; C.S.1929, § 17-520; R.S.1943, § 17-614; Laws 1969, c. 108, § 3, p. 510; Laws 1972, LB 1235, § 2; Laws 1994, LB 630, § 3; Laws 2001, LB 484, § 2; Laws 2003, LB 365, § 2.

1. Title and subject requirements
2. Vote required
3. Miscellaneous

1. Title and subject requirements

A city of the second class can repeal an ordinance only by enacting a later ordinance which contains the entire text, as amended, of the earlier ordinance or section being amended, along with a statement that the earlier version is repealed. Hammond v. City of Broken Bow, 239 Neb. 437, 476 N.W.2d 822 (1991).

Title need not be an index or abstract of the powers intended to be given. Gembler v. City of Seward, 136 Neb. 196, 285 N.W. 542 (1939), modified on rehearing 136 Neb. 916, 288 N.W. 545 (1939).

Where the minutes show ordinance was adopted, the presumption is that the ordinance was read as required. Provision that ordinance shall contain no subject, not clearly expressed in its title, is mandatory. Village of Deshler v. Southern Nebraska Power Co., 133 Neb. 778, 277 N.W. 77 (1938).

Where ordinance was passed and the vote recorded, it will be presumed it was duly read before passage, since this section does not affirmatively declare that the reading thereof on three different days must be recorded. Hull v. City of Humboldt, 107 Neb. 326, 186 N.W. 78 (1921).

Where title provides ''*** and ordinance authorizing and granting the right *** to construct and maintain an electric light power or gas plant or both'', such title is broad enough to grant the right to erect poles and wires in the city streets and to operate, extend, and repair them. City of York v. Iowa-Nebraska Light & Power Co., 109 F.2d 683 (8th Cir. 1940).

2. Vote required

Term ''three-fourths majority'' means three-fourths of quorum present and acting. City of North Platte v. North Platte Water-Works Co., 56 Neb. 403, 76 N.W. 906 (1898).

Council of city of second class may present and pass an ordinance of general nature on the same day if the rules are suspended by three-fourths vote of the council. Brown v. Lutz, 36 Neb. 527, 54 N.W. 860 (1893).

Final passage of ordinance requires favorable vote of members of city council, exclusive of mayor. State ex rel. Grosshans v. Gray, 23 Neb. 365, 36 N.W. 577 (1888).

3. Miscellaneous

Publication of a resolution is not required. Chicago, St. P., M. & O. Ry. Co. v. City of Randolph, 163 Neb. 687, 81 N.W.2d 159 (1957).

Section as complied with in passage of paving ordinance. Freeman v. City of Neligh, 155 Neb. 651, 53 N.W.2d 67 (1952).

Village ordinance, requiring construction of temporary sidewalk, on ungraded and unimproved street, is not ordinance of general or permanent nature and this section does not apply. Whitla v. Connor, 114 Neb. 526, 208 N.W. 670 (1926); Gibson v. Troupe, 96 Neb. 770, 148 N.W. 944 (1914).

This section does not permit issuance of warrant where only two members of a four-member council vote in favor thereof, although only one member votes against issuance. State ex rel. Katz-Craig Contracting Co. v. Darner, 95 Neb. 39, 144 N.W. 1048 (1914).

Ordinance, whose main object is to license and regulate, is not wholly void because a provision imposes an occupation tax not clearly expressed in the title. Morgan v. State, 64 Neb. 369, 90 N.W. 108 (1902).

17-615 Ordinances; passage; rules and regulations; proof.

All ordinances shall be passed pursuant to such rules and regulations as the council or board of trustees may provide. All such ordinances may be proved by the certificate of the clerk, under the seal of the city or village.

Source: Laws 1879, § 69, XXX, p. 217; Laws 1881, c. 23, § 8, XXX, p. 185; Laws 1885, c. 20, § 1, XXX, p. 176; Laws 1887, c. 12, § 1, XXX, p. 305; R.S.1913, § 5155; C.S.1922, § 4330; C.S.1929, § 17-521.

Where ordinance in question is printed in pamphlet form by authority of the city or village, it is entitled to be read and received as evidence in all courts. Village of Deshler v. Southern Nebraska Power Co., 133 Neb. 778, 277 N.W. 77 (1938).

17-616 Ordinances; contracts; appointments; vote; record.

On the passage or adoption of every bylaw or ordinance, and every resolution or order to enter into a contract by the council or board of trustees, the yeas and nays shall be called and recorded. To pass or adopt any bylaw, ordinance, or any such resolution or order, a concurrence of a majority of the whole number of members elected to the council or trustees shall be required. All appointments of the officers by any council or trustees shall be made viva voce; and the concurrence of a like majority shall be required, and the names of those, and for whom they voted, on the vote resulting in an appointment, shall be recorded. The requirements of a roll call or viva voce vote shall be satisfied by a city or village which utilizes an electronic voting device which allows the yeas and nays of each council member or member of the board of trustees to be readily seen by the public.

Source: Laws 1879, § 76, p. 221; R.S.1913, § 5156; C.S.1922, § 4331; C.S.1929, § 17-522; R.S.1943, § 17-616; Laws 1978, LB 609, § 2.

Where no record of the proceedings of the city council with reference to a purported contract can be shown, there is a presumption that no such contract was entered into. Wightman v. City of Wayne, 144 Neb. 871, 15 N.W.2d 78 (1944).

Where the record of a city council does not show the mayor signed an ordinance or that the yea and nay vote was taken and recorded at the time enacted, a nunc pro tunc order by new council eighteen months later cannot be permitted. Beverly Land Co. v. City of South Sioux City, 117 Neb. 47, 219 N.W. 385 (1928).

Where record shows that ordinance was passed and shows the vote thereon, and does not show it was not read, it will be presumed that the ordinance was duly read before adoption, though record does not affirmatively so show. Hull v. City of Humboldt, 107 Neb. 326, 186 N.W. 78 (1921).

Provisions of this section are mandatory. Payne v. Ryan, 79 Neb. 414, 112 N.W. 599 (1907).

Where half the members voted for and the remaining members failed to vote, the mayor's vote added nothing and the ordinance is invalid. State ex rel. Grosshans v. Gray, 23 Neb. 365, 36 N.W. 577 (1888).

ARTICLE 7
FISCAL MANAGEMENT

Section
17-701. Fiscal period; commencement.
17-702. Property tax; general levy authorized; sale for delinquent taxes; additional levies.
17-703. Special assessments; tax limit; refunding; when authorized; how paid.
17-704. Repealed. Laws 1965, c. 70, § 1.
17-705. Repealed. Laws 1978, LB 847, § 4.
17-706. Annual appropriation bill; contents.
17-707. Repealed. Laws 1971, LB 634, § 1.
17-708. Funds; expenditure; appropriation condition precedent.
17-709. Contracts; appropriation condition precedent.
17-710. Special assessments; expenditure; limitations.
17-711. Warrants; how executed.
17-712. Repealed. Laws 1967, c. 58, § 2.
17-713. Road tax; amount; when authorized.
17-714. Claims and accounts payable; filing; requirements; disallowance; notice; costs.
17-715. Claims; allowance; payment.
17-716. Transferred to section 19-3201.
17-717. Intersection paving bonds; tax authorized.
17-718. Voluntary fire departments; maintenance; tax; limitation.
17-719. Repealed. Laws 1969, c. 79, § 2.
17-720. Certificates of deposit; time deposits; security required.

17-701 Fiscal period; commencement.

In 1995, the fiscal period of each city of the second class and village commences on August 1, 1995, and extends through September 30, 1996.

Thereafter, the fiscal year of each city of the second class and village and of any public utility of a city of the second class or village commences on October 1 and extends through the following September 30 except as provided in the Municipal Proprietary Function Act.

Source: Laws 1879, § 85, p. 225; R.S.1913, § 5181; C.S.1922, § 4368; Laws 1927, c. 46, § 1, p. 194; C.S.1929, § 17-566; R.S.1943, § 17-701; Laws 1967, c. 78, § 1, p. 248; Laws 1969, c. 257, § 12, p. 937; Laws 1995, LB 194, § 5.

Cross References

Municipal Proprietary Function Act, see section 18-2801.

17-702 Property tax; general levy authorized; sale for delinquent taxes; additional levies.

(1) The council or board of trustees of each city of the second class or village shall, at the time and in the manner provided by law, cause to be certified to the county clerk the amount of tax to be levied upon the taxable value of all the taxable property of the city or village which the city or village requires for the purposes of the adopted budget statement for the ensuing year, including all special assessments and taxes assessed as hereinbefore provided. The county clerk shall place the same on the property tax lists to be collected in the manner provided by law for the collection of county taxes in the county where such city or village is situated. In all sales for any delinquent taxes for municipal purposes, if there are other delinquent taxes due from the same person or a lien on the same property, the sale shall be for all the delinquent taxes. Such sales and all sales made under or by virtue of this section or the provision of law herein referred to shall be of the same validity and in all respects be deemed and treated as though such sales had been made for the delinquent county taxes exclusively. Subject to section 77-3442, the maximum amount of tax which may be so certified, assessed, and collected shall not require a tax levy in excess of one dollar and five cents on each one hundred dollars upon the taxable value of all the taxable property within the corporate limits of such city or village for the purposes of the adopted budget statement, together with any special assessments or special taxes or amounts assessed as taxes and such sum as may be authorized by law for the payment of outstanding bonds and debts.

(2) Within the limitation of section 77-3442, the council or board of trustees of each city of the second class or village may certify an amount to be levied not to exceed ten and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property within such city or village for the purpose of establishing the sinking fund or funds authorized by sections 19-1301 to 19-1304. Nothing contained in subsection (1) or (2) of this section shall be construed to authorize an increase in the amount of levies for any specific municipal purpose or purposes elsewhere limited by law, whether limited in specific sums or by tax levies.

(3) When required by section 18-501, an additional levy of seven cents on each one hundred dollars upon the taxable value of all the taxable property within the city of the second class or village may be imposed.

Source: Laws 1879, § 82, p. 224; R.S.1913, § 5182; Laws 1915, c. 93, § 1, p. 235; Laws 1919, c. 61, § 2, p. 149; C.S.1922, § 4369; C.S.1929, § 17-567; Laws 1933, c. 30, § 1, p. 208; Laws 1937, c. 176, § 6, p. 697; Laws 1939, c. 12, § 6, p. 84; Laws 1941, c. 157, § 21, p. 623;

C.S.Supp.,1941, § 17-567; R.S.1943, § 17-702; Laws 1945, c. 28, § 2, p. 140; Laws 1945, c. 29, § 2, p. 144; Laws 1953, c. 287, § 18, p. 940; Laws 1957, c. 39, § 2, p. 211; Laws 1965, c. 69, § 1, p. 289; Laws 1967, c. 79, § 1, p. 251; Laws 1969, c. 145, § 19, p. 683; Laws 1979, LB 187, § 55; Laws 1992, LB 719A, § 56; Laws 1996, LB 1114, § 31.

Tax levy for payment of outstanding bonds is authorized. Talbott v. City of Lyons, 171 Neb. 186, 105 N.W.2d 918 (1960).

Lien of special assessments is not dependent upon certification to county clerk. Belza v. Village of Emerson, 159 Neb. 651, 68 N.W.2d 272 (1955).

Where taxpayer seeks to recover special assessments paid to city in improvement district later held illegal, statute of limitations begins to run from date such assessments were paid. Dorland v. City of Humboldt, 129 Neb. 477, 262 N.W. 22 (1935).

Municipalities have authority to levy taxes to pay judgments on all taxable property within their boundaries. Dawson County v. Clark, 58 Neb. 756, 79 N.W. 822 (1899).

Special assessments, certified to county clerk for payment of an improvement before any work is done, before any contract is made for the performance of the work, or before any estimate of the cost of the improvement is made, are void and may be enjoined. Bellevue Improvement Co. v. Village of Bellevue, 39 Neb. 876, 58 N.W. 446 (1894).

17-703 Special assessments; tax limit; refunding; when authorized; how paid.

If any such city or village has levied special assessments for part or all of the cost of any public work or improvement, if the assessments have been finally held by the courts to be invalid and unenforceable, if the defects rendering such assessments invalid and unenforceable are of such character that they cannot be remedied by reassessment, and if part of the special assessments has been paid under mistake of law or fact into such city or village prior to such final holding, the mayor and council or chairperson and board of trustees shall establish a special fund in the budget statement annually which is sufficient to refund and repay over a period of consecutive years such special assessments erroneously paid, without interest to the person or persons entitled to receive the same, any and all such assessments or parts thereof as may have been so paid into the treasury of such city or village, as the case may be. The amount of tax annually budgeted for this special fund shall not require a tax levy in excess of ten and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village in any one year, and the additional levy shall be continued only for as many years as may be necessary to raise the total amount required for such purpose. Such assessments shall be refunded out of the special fund upon proper claims filed by the person or persons entitled to reimbursement. Such claim shall be audited, allowed, and ordered paid in the same manner as other claims against such city or village. All such reimbursements shall be made pro rata if there is not sufficient money on hand to repay them all at one time. Such amount of tax for the special fund shall be specified in the adopted budget statement.

Source: Laws 1933, c. 30, § 1, p. 209; Laws 1937, c. 176, § 6, p. 698; Laws 1939, c. 12, § 6, p. 85; Laws 1941, c. 157, § 21, p. 624; C.S.Supp.,1941, § 17-567; R.S.1943, § 17-703; Laws 1945, c. 28, § 3, p. 141; Laws 1945, c. 29, § 3, p. 145; Laws 1953, c. 287, § 19, p. 941; Laws 1969, c. 145, § 20, p. 685; Laws 1979, LB 187, § 56; Laws 1992, LB 719A, § 57.

17-704 Repealed. Laws 1965, c. 70, § 1.

17-705 Repealed. Laws 1978, LB 847, § 4.

17-706 Annual appropriation bill; contents.

The city council of a city of the second class and board of trustees of a village shall adopt a budget statement pursuant to the Nebraska Budget Act, to be termed ''The Annual Appropriation Bill'', in which such corporate authorities may appropriate such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such corporation.

Source: Laws 1879, § 86, p. 225; R.S.1913, § 5184; C.S.1922, § 4371; C.S.1929, § 17-569; R.S.1943, § 17-706; Laws 1967, c. 78, § 2, p. 249; Laws 1972, LB 1423, § 1; Laws 1993, LB 734, § 26; Laws 1995, LB 194, § 6.

Cross References

Nebraska Budget Act, see section 13-501.

Contract by city council for repairing and rebuilding city hall involving sum in excess of that authorized by vote of people is void. Moore v. City of Central City, 118 Neb. 326, 224 N.W. 690 (1929).

Where proposition to issue bonds to fund indebtedness incurred without appropriation therefor is approved by majority of voters, action of city authorities is ratified and indebtedness is validated. State ex rel. City of Tekamah v. Marsh, 108 Neb. 835, 189 N.W. 381 (1922).

This section does not apply to borrowed money on hand for a specific purpose, sanctioned by majority of the legal voters, as such sanction is an appropriation. State ex rel. Fuller v. Martin, 27 Neb. 441, 43 N.W. 244 (1889).

17-707 Repealed. Laws 1971, LB 634, § 1.

17-708 Funds; expenditure; appropriation condition precedent.

The mayor and council or board of trustees shall have no power to appropriate, issue or draw any order or warrant on the treasurer for money, unless the same has been appropriated or ordered by ordinance, or the claim for the payment of which such order or warrant is issued has been allowed according to the provisions of sections 17-714 and 17-715, and funds for the class or object out of which such claim is payable have been included in the adopted budget statement or transferred according to law.

Source: Laws 1879, § 88, p. 226; R.S.1913, § 5186; C.S.1922, § 4373; C.S.1929, § 17-571; Laws 1935, Spec. Sess., c. 10, § 10, p. 77; Laws 1941, c. 130, § 18, p. 502; C.S.Supp.,1941, § 17-571; R.S. 1943, § 17-708; Laws 1959, c. 63, § 2, p. 283; Laws 1961, c. 47, § 3, p. 185; Laws 1967, c. 78, § 3, p. 249; Laws 1969, c. 145, § 21, p. 685; Laws 1972, LB 1423, § 2.

An appropriation is not necessary where funds to meet expenditures are not raised by taxation, the obligation being payable alone out of funds on hand and the net earnings of light plant purchased. Carr v. Fenstermacher, 119 Neb. 172, 228 N.W. 114 (1929).

17-709 Contracts; appropriation condition precedent.

No contract shall be hereafter made by the city council or board of trustees, or any committee or member thereof; and no expense shall be incurred by any of the officers or departments of the corporation, whether the object of the expenditures shall have been ordered by the city council or board of trustees or not, unless an appropriation shall have been previously made concerning such expense, except as otherwise expressly provided in section 17-708.

Source: Laws 1879, § 89, p. 227; R.S.1913, § 5187; C.S.1922, § 4374; C.S.1929, § 17-572; R.S.1943, § 17-709; Laws 1967, c. 78, § 4, p. 251.

The power of city authorities to contract is determined by the amounts appropriated plus such unexpended funds of previous levies and appropriations on hand on date of such contract, and the power is not diminished by the failure to assess taxes to the extent authorized. LeBarron v. City of Harvard, 129 Neb. 460, 262 N.W. 26 (1935).

When there is unused and unappropriated money in the general fund at the time of employment of an auditor, such contract is valid and a subsequent depletion of such funds does not void such contract. Campbell Co. v. City of Harvard, 123 Neb. 539, 243 N.W. 653 (1932).

Municipality had authority to contract for the construction of a waterworks though no estimate or appropriation was made prior to such contract. Chicago Bridge & Iron Works v. City of South Sioux City, 108 Neb. 827, 189 N.W. 367 (1922).

This section prohibits council from making any contract or incurring expense unless an appropriation shall have been made previously concerning such expense. Ballard v. Cerney, 83 Neb. 606, 120 N.W. 151 (1909).

Where no previous appropriation is made for fire hydrant rentals, a contract therefor is void, but, where village retains the benefits of such contract and has authority to make a valid contract, such village is liable in quantum meruit for benefits conferred. Lincoln Land Company v. Village of Grant, 57 Neb. 70, 77 N.W. 349 (1898).

When an ordinance is duly passed, city may contract for water rentals and the payments thereof with private party, and such contract is good though not preceded by an appropriation to meet such rentals. City of North Platte v. North Platte Water-Works Co., 56 Neb. 403, 76 N.W. 906 (1898).

Ultra vires contract can be ratified only upon condition essential to valid contract in first instance. Gutta Percha & Rubber Mfg. Co. v. Village of Ogallala, 40 Neb. 775, 59 N.W. 513 (1894).

City council cannot incur or contract indebtedness until an annual appropriation ordinance has been passed or the expenditures have been sanctioned by a majority of the voters. McElhinney v. City of Superior, 32 Neb. 744, 49 N.W. 705 (1891); City of Blair v. Lantry, 21 Neb. 247, 31 N.W. 790 (1887).

Contract for the purchase of a waterworks plant was not invalid because no provision for payment thereunder had been previously made under an appropriation bill. Slocum v. City of North Platte, 192 F. 252 (8th Cir. 1911).

17-710 Special assessments; expenditure; limitations.

All money received on special assessments shall be held by the treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made, and such money shall be used for no other purpose whatever, unless to reimburse such corporation for money expended for such improvement.

Source: Laws 1879, § 90, p. 227; R.S.1913, § 5188; C.S.1922, § 4375; C.S.1929, § 17-573.

17-711 Warrants; how executed.

All warrants drawn upon the treasurer must be signed by the mayor or chairman and countersigned by the clerk, stating the particular fund to which the same is chargeable, the person to whom payable, and for what particular object. No money shall be otherwise paid than upon such warrants so drawn. Each warrant shall specify the amount included in the adopted budget statement for such fund upon which it is drawn, and the amount already expended of such fund.

Source: Laws 1879, § 66, p. 210; R.S.1913, § 5190; C.S.1922, § 4380; C.S.1929, § 17-578; R.S.1943, § 17-711; Laws 1969, c. 145, § 22, p. 686.

Where warrants were drawn by the mayor and city clerk for the purchase of an addition to a cemetery, the title to which was later refused by the city council, without a prior appropriation therefor or without the sanction of a majority of the legal voters, the mayor and clerk who drew such warrant are liable to the city for the funds of the city so withdrawn through such warrant. City of Blair v. Lantry, 21 Neb. 247, 31 N.W. 790 (1887).

17-712 Repealed. Laws 1967, c. 58, § 2.

17-713 Road tax; amount; when authorized.

The council or board of trustees of such city or village shall, upon petition being filed with the clerk of the city or village signed by a majority of the resident freeholders of such city or village requesting such council or board of trustees to levy a tax upon the taxable valuation of the property in the city or village, make a levy as in such petition requested, not exceeding eighty-seven and five-tenths cents on each one hundred dollars of taxable valuation, and shall certify the same to the board of county commissioners as other taxes are levied by the city or village, or certified, for the purpose of creating a fund. The fund shall be expended solely in the improvement of the public highways

adjacent to the city or village and within five miles thereof, shall at all times be under the control and direction of the council or board of trustees of the city or village, and shall be expended under the authority and direction of the council or board. The council or board is hereby granted the power and authority to employ such person or persons as it may select for the performance of such work under such rules and regulations as it may by ordinance provide.

Source: Laws 1905, c. 32, § 1, p. 263; R.S.1913, § 5191; C.S.1922, § 4381; Laws 1925, c. 166, § 5, p. 438; C.S.1929, § 17-579; R.S.1943, § 17-713; Laws 1979, LB 187, § 57; Laws 1992, LB 719A, § 58.

17-714 Claims and accounts payable; filing; requirements; disallowance; notice; costs.

All liquidated and unliquidated claims and accounts payable against a city of the second class or village shall: (1) Be presented in writing; (2) state the name and address of the claimant and the amount of the claim; and (3) fully and accurately identify the items or services for which payment is claimed or the time, place, nature, and circumstances giving rise to the claim.

As a condition precedent to maintaining an action for a claim, other than a tort claim as defined in section 13-903, the claimant shall file such claim within ninety days of the accrual of the claim in the office of the city or village clerk.

The city or village clerk shall notify the claimant or his or her agent or attorney by letter mailed to the claimant's address within five days if the claim is disallowed by the city council or village board of trustees.

No costs shall be recovered against such city or village in any action brought against it for any claim or for any claim allowed in part which has not been presented to the city council or village board of trustees to be audited, unless the recovery is for a greater sum than the amount allowed with the interest due.

Source: Laws 1879, § 80, p. 223; R.S.1913, § 5192; C.S.1922, § 4382; C.S.1929, § 17-580; R.S.1943, § 17-714; Laws 1955, c. 42, § 1, p. 157; Laws 1990, LB 1044, § 2.

Presentation of claim to municipal utility board, where that board had no power to consider claims nor any duty to forward claims to the city council, does not constitute compliance with this section. Hammond v. City of Broken Bow, 239 Neb. 437, 476 N.W.2d 822 (1991).

The word ''claim'' as used in this section applies alone to those arising upon contract and not in tort. Bayard v. City of Franklin, 87 Neb. 57, 127 N.W. 113 (1910); Butterfield v. City of Beaver City, 84 Neb. 417, 121 N.W. 592 (1909); Village of Ponca v. Crawford, 18 Neb. 551, 26 N.W. 365 (1886); Nance v. Falls City, 16 Neb. 85, 20 N.W. 109 (1884).

The requirement that no costs can be recovered unless the claim has been first presented to the mayor and council to be audited does not make their action judicial, and their decision does not have the force and effect of a judgment. State ex rel. Minden Edison E. L. & P. Co. v. City of Minden, 84 Neb. 193, 120 N.W. 913 (1909), 21 L.R.A.N.S. 289 (1909).

Fact that claim was filed with council need not be proved in personal injury cases. City of Lexington v. Fleharty, 74 Neb. 626, 104 N.W. 1056 (1905); City of Lexington v. Kreitz, 73 Neb. 770, 103 N.W. 444 (1905).

The failure to present a claim to council where the action is for personal injuries does not affect the right of recovery. City of Chadron v. Glover, 43 Neb. 732, 62 N.W. 62 (1895).

Failure to present claim to council prevents the recovery of costs but does not affect recovery otherwise. City of Crete v. Childs, 11 Neb. 252, 9 N.W. 55 (1881).

17-715 Claims; allowance; payment.

Upon the allowance of claims by the council or trustees, the order for their payment shall specify the particular fund or appropriation out of which they are payable as specified in the adopted budget statement; and no order or warrant shall be drawn in excess of eighty-five percent of the current levy for the purpose for which it is drawn, unless there shall be sufficient money in the treasury at the credit of the proper fund for its payment; *Provided,* that in the

event there exists at the time such warrant is drawn, obligated funds from the federal government or the State of Nebraska, or both from the federal government and the State of Nebraska, for the general purpose or purposes of such warrant, then such warrant may be drawn in excess of eighty-five percent of the current levy for the purpose for which it is drawn to the additional extent of one hundred percent of such obligated federal or state funds. No claim shall be audited or allowed unless an order or warrant for the payment thereof may legally be drawn.

Source: Laws 1879, § 81, p. 223; Laws 1885, c. 18, § 1, p. 160; R.S.1913, § 5193; C.S.1922, § 4383; C.S.1929, § 17-581; R.S.1943, § 17-715; Laws 1969, c. 145, § 23, p. 686; Laws 1972, LB 693, § 1.

Where warrant is drawn in excess of eighty-five per cent of the current levy, unless sufficient money is in the treasury to credit of the proper fund for the payment thereof, the warrant is void and the payment thereof may be enjoined. Ballard v. Cerney, 83 Neb. 606, 120 N.W. 151 (1909).

Where warrant was issued by reason of fraudulent representations of payee's agent, mandamus will not force city treasurer to pay the same in third person's hands. State ex rel. First Nat. Bank of York v. Cook, 43 Neb. 318, 61 N.W. 693 (1895).

17-716 Transferred to section 19-3201.

17-717 Intersection paving bonds; tax authorized.

Any city of the second class or village is hereby authorized, annually, to levy a tax upon all the taxable property thereof, sufficient to pay the principal and interest of any intersection paving bonds issued by such municipality.

Source: Laws 1921, c. 199, § 3, p. 721; C.S.1922, § 4389; C.S.1929, § 17-587.

17-718 Voluntary fire departments; maintenance; tax; limitation.

The city council in cities and board of trustees in villages having only voluntary fire departments or companies may levy a tax annually of not more than seven cents on each one hundred dollars upon the taxable value of all the taxable property within such cities or villages for the maintenance and benefit of such fire departments or companies. The amount of such tax shall be established at the beginning of the year and shall be included in the adopted budget statement. Upon collection of such tax, the city or village treasurer shall disburse the same upon the order of the chief of the fire department with the approval of the city council or board of trustees.

Source: Laws 1921, c. 198, § 1, p. 720; C.S.1922, § 4391; C.S.1929, § 17-589; R.S.1943, § 17-718; Laws 1947, c. 38, § 1, p. 150; Laws 1953, c. 287, § 21, p. 943; Laws 1969, c. 96, § 1, p. 464; Laws 1969, c. 145, § 24, p. 687; Laws 1979, LB 187, § 58; Laws 1992, LB 719A, § 59.

17-719 Repealed. Laws 1969, c. 79, § 2.

17-720 Certificates of deposit; time deposits; security required.

The city or village treasurer of cities of the second class and villages may, upon resolution of the mayor and council or board of trustees authorizing the same, purchase certificates of deposit from and make time deposits in any bank, capital stock financial institution, or qualifying mutual financial institution in the State of Nebraska to the extent that such certificates of deposit or time deposits are insured by the Federal Deposit Insurance Corporation.

Deposits may be made in excess of the amounts so secured by the corporation, and the amount of the excess deposit shall be secured by a bond or by security given in the same manner as is provided for cities of the first class in sections 16-714 to 16-716 as of the time the deposit is made. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1969, c. 84, § 1, p. 424; Laws 1987, LB 440, § 8; Laws 1990, LB 825, § 1; Laws 1993, LB 157, § 3; Laws 1996, LB 1274, § 23; Laws 2001, LB 362, § 25.

ARTICLE 8

BOARD OF PUBLIC WORKS IN CITIES OF THE SECOND CLASS

Section

17-801 Board of public works; how created; members; appointment; removal; qualifications; terms.

Whenever any city of the second class has or is about to establish or acquire any system of waterworks, power plant, ice plant, gas plant, sewerage, heating or lighting plant, or distribution system, the city council of such city may, in its own discretion, by ordinance, create a board of public works, which shall consist of not less than three, nor more than six members, residents of such city, to be appointed by the mayor, subject to the approval of the city council; and they may be removed by the mayor and a majority of the members elected to the city council at any time. The term of the first members of the board shall be one, two, three, or four years in the manner designated by the mayor, as the case may be, after which the term of each member shall be four years; and the terms of not more than two members shall expire at any one time.

Source: Laws 1935, c. 33, § 1, p. 138; C.S.Supp.,1941, § 17-701; R.S. 1943, § 17-801; Laws 1975, LB 162, § 1.

17-802 Board of public works; powers and duties; city council; approve budget.

The city council may, by ordinance, confer upon a board of public works the active direction and supervision of any or all of the utility systems owned or operated by such city. The city council shall approve the budget of each proprietary function as provided in the Municipal Proprietary Function Act. Such board shall have the power to operate any utility referred to it and to exercise all powers conferred by law upon such cities for the operation and government of such utility to the same extent, in the same manner, and under the same restrictions as the city council could do if no such board of public

works existed, except that such board of public works shall not make any expenditure or contract any indebtedness other than for ordinary running expenses, exceeding an amount established by the city council, without first obtaining the approval of the city council. The board of public works shall report to the city council at regular intervals as it may require.

Source: Laws 1935, c. 33, § 2, p. 139; Laws 1937, c. 34, § 1, p. 160; C.S.Supp.,1941, § 17-702; R.S.1943, § 17-802; Laws 1949, c. 29, § 2(1), p. 113; Laws 1983, LB 304, § 5; Laws 1993, LB 734, § 27.

Cross References

Municipal Proprietary Function Act, see section 18-2801.

17-802.01 Board of public works; insurance plan; cooperation and participation.

The mayor and council may, by ordinance, authorize and empower the board of public works to cooperate and participate in a plan of insurance designed and intended for the benefit of the employees of any public utility operated by the city. For that purpose the board of public works may make contributions to pay premiums or dues under such plan, authorize deductions from salaries of employees, and take such other steps as may be necessary to effectuate such plan of insurance.

Source: Laws 1949, c. 29, § 2(2), p. 113.

17-803 Board of public works; surplus funds; investment.

Any surplus funds arising out of the operation of any such utilities by the board of public works, or by the city council, where any of such utilities are not being operated by such a board, may be invested, if not invested pursuant to the provisions of any other law upon the subject, in like manner and subject to the same conditions as the investment of similar funds of cities of the first class, as provided in section 16-691.01.

Source: Laws 1937, c. 34, § 1, p. 160; C.S.Supp.,1941, § 17-702; R.S. 1943, § 17-803; Laws 1959, c. 51, § 1, p. 242; Laws 1961, c. 47, § 5, p. 187.

17-804 Water and light commissioner; compensation; removal.

In the event such city shall have created a board of public works as provided in section 17-801, the water commissioner and light commissioner shall, subject to confirmation by the mayor and council, be employed thereafter by said board at such reasonable compensation as may be agreed upon at the time of such employment and shall thereafter be under the jurisdiction of said board, any of the provisions of sections 17-401 to 17-426, 17-501 to 17-560 and 19-1401 to 19-1404 to the contrary notwithstanding. Any water commissioner or light commissioner, under the jurisdiction and control of the board of public works, may be removed by the board, after an opportunity to be heard before the mayor and council if he shall so request, for malfeasance, misfeasance or neglect in office.

Source: Laws 1935, c. 33, § 2, p. 139; Laws 1937, c. 34, § 1, p. 161; C.S.Supp.,1941, § 17-702.

17-805 Board of public works; organization; meetings; records.

The members of the board of public works shall organize as soon as practicable after their appointment, by electing a chairman and secretary, who shall serve until the first meeting in June next following; and thereafter said board shall elect a chairman and secretary at the first meeting in June each year. In the absence of the regular officers, temporary officers to serve in their places may be chosen by the members present at any meeting. They shall establish regular times for meeting and may adopt such rules as may be necessary or desirable for the conduct of their business. They shall keep a record of their proceedings and if there is a legal newspaper published in or of general circulation in said city, shall publish therein the minutes of each meeting within thirty days after it is held.

Source: Laws 1935, c. 33, § 3, p. 139; C.S.Supp.,1941, § 17-703.

17-806 Board members; oath; bond.

Each of the members of said board of public works shall take an oath to discharge faithfully the duties of his office before entering upon the discharge thereof. Each of the members of said board before entering upon the duties of his office shall be required to give bond to the city with corporate surety. Such bond shall be in the sum of five thousand dollars and shall be conditioned for the faithful performance of the duties of member of the board of public works; and the surety on such bond shall be approved by the mayor and council and shall be filed with the city treasurer; *Provided*, the premium on said bond shall be paid out of any public utility fund designated by the mayor and council.

Source: Laws 1935, c. 33, § 4, p. 140; C.S.Supp.,1941, § 17-704.

17-807 Board members; interest in contracts prohibited.

No member of the board of public works shall ever be financially interested, directly or indirectly, in any contract entered into by them on behalf of such city for more than ten thousand dollars in one year.

Source: Laws 1935, c. 33, § 5, p. 140; C.S.Supp.,1941, § 17-705; R.S. 1943, § 17-807; Laws 1973, LB 24, § 3.

17-808 Bookkeeper and clerk.

If the board determines that the best interests of the municipality and the patrons of the utility will be better or more economically served thereby, they may employ the duly elected city clerk as ex officio bookkeeper and collector for the utility or utilities, and he may be paid a reasonable salary for the extra services required of him in such position in addition to his salary as city clerk.

Source: Laws 1935, c. 33, § 6, p. 140; C.S.Supp.,1941, § 17-706.

17-809 Repealed. Laws 1971, LB 32, § 5; Laws 1971, LB 435, § 1.

17-810 Rates; power to fix.

Rates or charges for service may be fixed or changed by resolution duly adopted by the board of public works.

Source: Laws 1935, c. 33, § 8, p. 140; C.S.Supp.,1941, § 17-708.

ARTICLE 9
PARTICULAR MUNICIPAL ENTERPRISES

(a) PUBLIC UTILITIES SERVICE

(b) SEWERAGE SYSTEM

(c) CEMETERIES

(a) PUBLIC UTILITIES SERVICE

17-901 Utilities; service; contracts for sale; when authorized.

Any city of the second class or village is hereby authorized and empowered to enter into a contract for the furnishing of electricity, power, steam or other product of any system or plant, owned and operated by such city or village, to any person or corporation, if the furnishing of such electricity, power, steam or other product shall not interfere with the proper purposes for which the lighting, heating, waterworks or other plant of such city or village was intended.

Source: Laws 1907, c. 19, § 1, p. 132; R.S.1913, § 5142; Laws 1917, c. 104, § 1, p. 275; Laws 1919, c. 49, § 1, p. 142; C.S.1922, § 4317; C.S.1929, § 17-508.

Where village without authority makes a contract with power company to furnish electric current to village and its people by ordinance, at a definite rate for twenty-five years, and thereafter the Legislature empowered it to make such contracts, the company is estopped to claim the contracts were ultra vires when made. Village of Davenport v. Meyer Hydro-Electric Power Co., 110 Neb. 367, 193 N.W. 719 (1923).

Where city without statutory authority makes contract with power company for electric current for a definite time and rate, and thereafter Legislature empowers it to make such contracts, the power company is estopped to claim such contract is ultra vires, and will be compelled to complete it. Central Power Co. v. Central City, 282 F. 998 (8th Cir. 1922).

17-902 Utilities; contracts for service; transmission lines authorized.

Any city of the second class or village is hereby authorized and empowered to enter into a contract with any person or corporation either within or without the corporate limits of such city or village for the furnishing of electricity, power, steam or other product to such city or village or to any electric, power, steam or other system or plant owned and operated by such city or village. Such city of the second class or village is hereby authorized and empowered for the purpose of carrying out the provisions of sections 17-901 to 17-904, to have a right-of-way for and to maintain transmission lines upon, within and across any of the public highways of this state as is provided by law for persons, firms, associations and corporations engaged in generating and transmitting electric current within this state.

Source: Laws 1919, c. 49, § 1, p. 142; C.S.1922, § 4317; C.S.1929, § 17-508.

17-903 Utilities; contracts for service; approval of electors; bonds; interest; taxes.

Before any city of the second class or village shall make any contract with any person or corporation within or without such city or village for the furnishing of electricity, power, steam or other product to such city or village, or any such municipal plant within such city or village, the question shall be submitted to the electors voting at any regular or special election upon the proposition; and such city of the second class or village may, by a majority vote at such election, vote bonds or taxes for the purpose of defraying the cost of such transmission line and connection with any person, firm, corporation or other city or village with which it may enter into a contract for the purchasing of electricity, power, steam or other product. The question of issuing bonds for any of the purposes herein contemplated shall be submitted to the electors at an election held for that purpose, after not less than twenty days' notice thereof shall have been given by publication in some newspaper published and of general circulation in such municipality, or, if no newspaper is published therein, then by posting in five or more public places therein. Such bonds may

be issued only when a majority of the electors voting on the question favor their issuance. They shall bear interest, payable annually or semiannually, and shall be payable any time the municipalities may determine at the time of their issuance, but in not more than twenty years after their issuance. The council or board shall levy annually a sufficient tax to maintain, operate, and extend any system or plant, and to provide for the payment of the interest on, and the principal of, any bonds that may have been issued as herein provided; *Provided*, that if no tax or issuance of bonds is required, any city of the second class or village may by resolution of the city council or board of trustees contract for the furnishing of electricity at retail to such city or village, or to any electric plant within such city or village, with any public power district, or an electric cooperative which cooperative has an approved retail service area adjoining such city or village.

Source: Laws 1917, c. 104, § 1, p. 275; Laws 1919, c. 49, § 1, p. 143; C.S.1922, § 4317; C.S.1929, § 17-508; R.S.1943, § 17-903; Laws 1965, c. 58, § 4, p. 268; Laws 1969, c. 83, § 4, p. 420; Laws 1969, c. 51, § 49, p. 302.

Village could abandon contract without authorization by electors. Babson v. Village of Ulysses, 155 Neb. 492, 52 N.W.2d 320 (1952).

17-904 Transmission line outside city prohibited.

Nothing contained in sections 17-901 to 17-903 shall be construed as granting power to any city of the second class or village to construct and maintain transmission lines outside of such city or village for the purpose of selling electricity, power, steam or other product of its plant to another municipality or the residents therein.

Source: Laws 1919, c. 49, § 1, p. 144; C.S.1922, § 4317; C.S.1929, § 17-508.

17-905 Utilities; acquisition; revenue bonds; issuance; when authorized.

Supplemental to any existing law on the subject and in lieu of the issuance of general obligation bonds, or the levying of taxes upon property, as by law provided, any city of the second class or any village may construct, purchase or otherwise acquire a waterworks plant or a water system, or a gas plant or a gas system, including a natural or bottled gas plant, gas distribution system or gas pipe lines, either within or without the corporate limits of the city or village, and real and personal property needed or useful in connection therewith, and pay the cost thereof by pledging and hypothecating the revenue and earnings of any waterworks plant or water system, or gas plant or gas system, including a natural or bottled gas plant, gas distribution system or gas pipelines, owned or to be owned by the city or village. In the exercise of the authority herein granted, the city or village may issue and sell revenue bonds or debentures and enter into such contracts in connection therewith as may be proper and necessary. Such revenue bonds or debentures shall be a lien only upon the revenue and earnings of the waterworks plant or water system, gas plant or gas system, including a natural or bottled gas plant, gas distribution system or gas pipe lines, owned or to be owned by the city or village. No such city or village shall pledge or hypothecate the revenue and earnings of any waterworks plant or water system, or gas plant or gas system, including a natural or bottled gas plant, gas distribution system or gas pipelines, nor issue revenue bonds or

debentures, as herein authorized, until the proposition relating thereto has been submitted in the usual manner to the qualified voters of such city or village at a general or special election, and approved by a majority of the electors voting on the proposition submitted; *Provided,* such proposition shall be submitted, whenever requested, within thirty days after a sufficient petition signed by the qualified voters of such city or village equal in number to twenty percent of the vote cast at the last general municipal election held therein is filed with the city clerk or village clerk, as the case is. Three weeks' notice of the submission of the proposition shall be given by publication in some legal newspaper published in or of general circulation in such city or village, or, if no legal newspaper is published therein, then by posting in five or more public places therein. The requirement herein for a vote of the electors, however, shall not apply when such city or village seeks to pledge or hypothecate such revenue or earnings, or issue revenue bonds or debentures solely for the maintenance, extension or enlargement of any waterworks plant or water system, or any gas plant or any gas system, including a natural or bottled gas plant, gas distribution system or gas pipelines, owned by such city or village.

Source: Laws 1941, c. 22, § 2, p. 113; C.S.Supp.,1941, § 17-596.

Issuance of revenue bonds is authorized. Talbott v. City of Lyons, 171 Neb. 186, 105 N.W.2d 918 (1960).

Power to acquire gas distribution system by eminent domain was not conferred. Village of Walthill v. Iowa Electric Light & Power Co., 125 F.Supp. 859 (D. Neb. 1954).

17-905.01 Gas distribution system or bottled gas plant; lease by city; terms; submission to election.

Any city of the second class or any village which constructs a gas distribution system, or purchases or otherwise acquires a bottled gas plant, within the corporate limits of the city or village as provided in section 17-905, may lease any such facility or facilities to any such person, persons, corporation or corporations as the governing body of such city of the second class or village may select, upon such terms and conditions as it shall deem advisable; *Provided*, if there are any revenue bonds outstanding or to be outstanding at the time the lease becomes effective, for which the revenue and earnings of such facility or facilities are or shall be pledged and hypothecated, the net lease payments shall be sufficient to pay the principal and interest on said revenue bonds as the same become due; *and provided further*, that such proposition shall be first submitted to the qualified voters of such city of the second class or village in the manner set forth in section 17-905, such proposition to be submitted either independently of or in conjunction with the proposition set forth in section 17-905.

Source: Laws 1963, c. 69, § 1, p. 270.

17-906 Power plant; construction; eminent domain; procedure.

Any city of the second class or village is hereby authorized and empowered to erect a power plant, electric or other light works outside the corporate limits of such city or village, and to acquire such real estate required for any plant. Such city or village in establishing and erecting such plant shall have the right to purchase or take private property for the purpose of erecting the plant and constructing, running, and extending its transmission line. In all cases such city or village shall pay to such person or persons whose property shall be taken or injured thereby such compensation therefor as may be agreed upon or as shall be allowed by lawful condemnation proceedings. The procedure to condemn

property shall be exercised in the manner set forth in sections 76-704 to 76-724, except as to property specifically excluded by section 76-703 and as to which sections 19-701 to 19-707 are applicable.

Source: Laws 1921, c. 192, § 1, p. 711; C.S.1922, § 4394; C.S.1929, § 17-601; R.S.1943, § 17-906; Laws 1951, c. 101, § 59, p. 474.

Power is conferred upon municipality to erect electric or other light works outside the corporate limits of the municipality, and to raise funds therefor. Interstate Power Co. v. City of Ainsworth, 125 Neb. 419, 250 N.W. 649 (1933).

17-907 Power plant; transmission lines; right-of-way.

Such city or village is hereby given, for the purpose of erecting and operating such plant, a right-of-way over and the right to erect and maintain transmission lines upon, within, and across any of the public highways of the state, subject to the provisions of sections 75-709 to 75-724.

Source: Laws 1921, c. 192, § 1, p. 711; C.S.1922, § 4394; C.S.1929, § 17-601; R.S.1943, § 17-907; Laws 1992, LB 866, § 1.

17-908 Power plant; construction; election; bonds; interest; redemption.

Before such city or village makes any contract with any person or corporation relating in any manner whatever to the erection of such proposed plant, the question as to whether such plant shall be erected shall be duly submitted to the electors voting at any regular or special election upon the proposition, and such city of the second class or village may by a majority of the votes cast at such election vote bonds in an amount not in excess of seven percent of the taxable valuation of such city or village for the purpose of defraying the cost of such plant. The question of issuing such bonds shall be submitted to the electors at an election held for that purpose after not less than thirty days' notice thereof has been given by publication in some newspaper of general circulation in such city or village or, if no newspaper is published therein, then by posting at five or more public places therein for at least thirty days before such election. Such bonds shall bear interest, payable annually or semiannually, and shall be payable any time the city or village may determine at the time of their issuance but in not more than twenty years after their issuance. The city or village shall have the option of paying any or all of such bonds at any time after five years from their date.

Source: Laws 1921, c. 192, § 1, p. 712; C.S.1922, § 4394; C.S.1929, § 17-601; R.S.1943, § 17-908; Laws 1969, c. 51, § 50, p. 304; Laws 1971, LB 534, § 15; Laws 1992, LB 719A, § 60.

17-909 Power plant; operation and extension; tax authorized.

The council or board of such city or village shall levy annually a sufficient tax to maintain, operate and extend any such plant, and to provide for the payment of the interest on the principal of any bonds that may have been issued as provided in section 17-908.

Source: Laws 1921, c. 192, § 1, p. 712; C.S.1922, § 4394; C.S.1929, § 17-601.

17-910 Joint power plant; construction; approval of electors.

Two or more cities of the second class or villages may jointly erect such a plant which shall serve such respective cities or villages, and such plant may be

owned and operated jointly by such respective cities or villages. Such cities or villages shall have the same rights and privileges as are in sections 17-906 to 17-909 granted to any single city or village. Before such cities or villages shall make any contract with any person or corporation relating in any manner whatever to the erection of such proposed plant, the question as to whether such jointly owned and operated plant shall be erected shall first be duly submitted to the electors of the respective cities or villages contemplating the erection of such plant, and approved by a sixty percent majority of the voters in each of such cities or villages in the manner provided in section 17-908.

Source: Laws 1921, c. 192, § 2, p. 712; C.S.1922, § 4395; C.S.1929, § 17-602.

Electric or other light works may be constructed by a municipality outside its corporate limits. Interstate Power Co. v. City of Ainsworth, 125 Neb. 419, 250 N.W. 649 (1933).

17-911 Joint power plant; bonds; election; interest.

Such cities or villages in contemplating the erection of such a plant may vote joint bonds in an amount not in excess of seven percent of the valuation of such cities or villages for the purpose of defraying the cost of such plant. The question of issuing such joint bonds for the purpose contemplated shall be submitted to the electors of the respective cities or villages interested at an election held for that purpose in each of such cities or villages after notice thereof for not less than twenty days shall have been given by publication in the manner provided in section 17-908. Such bonds may be issued only when a majority of the electors in each of the cities or villages interested and voting on the question favor their issuance. If in any one of such cities or villages voting on such question a majority of the electors voting in such city or village shall fail to favor the issuance of such joint bonds then the entire election in all of the cities or villages voting shall be deemed void and of no effect. Such joint bonds shall bear interest payable annually or semiannually, and shall be payable any time the cities or villages may determine at the time of their issuance, but in not more than twenty years after their issuance, with the option of paying any or all of such bonds at any time after five years from their date.

Source: Laws 1921, c. 192, § 2, p. 713; C.S.1922, § 4395; C.S.1929, § 17-602; R.S.1943, § 17-911; Laws 1969, c. 51, § 51, p. 304; Laws 1971, LB 534, § 16.

17-912 Joint power plant; operation and extension; tax.

The councils or boards of the cities or villages issuing such joint bonds for the erection of such plant shall levy annually a sufficient tax to maintain and operate and extend such plant and to provide for the payment of interest on, and principal of, any bonds that may have been issued as herein provided.

Source: Laws 1921, c. 192, § 2, p. 713; C.S.1922, § 4395; C.S.1929, § 17-602.

(b) SEWERAGE SYSTEM

17-913 Sewers; resolution to construct, purchase, or acquire; contents; estimate of cost.

Whenever the city council of any city of the second class, or the board of trustees of any village, shall deem it advisable or necessary to build, recon-

struct, purchase, or otherwise acquire a sanitary sewer system or a sanitary or storm water sewer, or sewers or sewage disposal plant, or pumping stations or sewer outlets for any such city or village, constructed or to be constructed in whole or in part inside or outside thereof, 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 disposal plants or pumping stations or outlet sewers, 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 city engineer of any such city or by the engineer who has been employed by any such city or village for such purpose. If it is proposed to purchase or otherwise acquire a sanitary sewer system or a sanitary or storm water sewer, or sewers or sewage disposal plant, or pumping stations or sewer outlets, the resolution shall state the price and conditions of the purchase or how same is being acquired. 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 city council or board of trustees shall have power to assess, to the extent of special benefits, the cost of such portions of said improvements as are local improvements, upon properties found especially benefited thereby; and the resolution, hereinabove mentioned, shall state the outer boundaries of the district or districts in which it is proposed to make special assessments.

Source: Laws 1919, c. 189, § 1, p. 427; Laws 1921, c. 281, § 1, p. 926; C.S.1922, § 4337; Laws 1923, c. 143, § 1, p. 355; C.S.1929, § 17-528; R.S.1943, § 17-913; Laws 1947, c. 39, § 1, p. 151.

Notice by mail need not be given of passage of resolution of necessity declaring advisability of constructing sewer system. Jones v. Village of Farnam, 174 Neb. 704, 119 N.W.2d 157 (1963).

Resolution of necessity should state outer boundaries of district. Hutton v. Village of Cairo, 159 Neb. 342, 66 N.W.2d 820 (1954).

Where sewer improvements are made, special assessments to pay therefor may be levied by resolution of the council and an ordinance therefor is not mandatory. Weilage v. City of Crete, 110 Neb. 544, 194 N.W. 437 (1923).

Special assessments, levied by the frontage rule, must not exceed the local benefits conferred. Hurd v. Sanitary Sewer District No. 1 of Harvard, 109 Neb. 384, 191 N.W. 438 (1922).

17-914 Sewers; resolution to construct; publication; hearing.

Notice of the time when any such resolution shall be set for consideration before the council or board shall be given by at least two publications in a newspaper of general circulation published in the city or village, which publication shall contain the entire wording of the resolution. The last publication shall be not less than five days nor more than two weeks prior to the time set for hearing of objections to the passage of any such resolution, at which hearing the owners of the property which might become subject to assessment for the contemplated improvement may appear and make objections to the proposed improvement. Thereupon the resolution may be amended and passed or passed as proposed.

Source: Laws 1919, c. 189, § 1, p. 428; C.S.1922, § 4338; C.S.1929, § 17-529.

Compliance was had with the requirements of this section. Jones v. Village of Farnam, 174 Neb. 704, 119 N.W.2d 157 (1963).

Resolution of necessity may be amended. Hutton v. Village of Cairo, 159 Neb. 342, 66 N.W.2d 820 (1954).

17-915 Sewers; resolution to construct; posting.

If there is no newspaper of general circulation published within any such city or village, notice as provided in section 17-914 shall be given for the same length of time by posting the same in three conspicuous places in such city or village, two of which shall be the clerk's office and the post office.

Source: Laws 1919, c. 189, § 3, p. 428; C.S.1922, § 4339; C.S.1929, § 17-530.

17-916 Sewers; resolution to construct; petition in opposition; effect.

If a petition, opposing the resolution, signed by property owners representing a majority of the front footage which may become subject to assessment for the cost in any proposed lateral sewer district, be filed with the clerk within three days before the date of the meeting for the hearing on such resolution, such resolution shall not be passed.

Source: Laws 1919, c. 189, § 4, p. 428; C.S.1922, § 4340; C.S.1929, § 17-531.

Ample opportunity is given to make objections to the creation of a sanitary sewer system. Jones v. Village of Farnam, 174 Neb. 704, 119 N.W.2d 157 (1963).

Special assessments, levied by the frontage rule, must be uniform and levied on abutting property only and must not exceed the local benefits conferred. Hurd v. Sanitary Sewer District No. 1 of Harvard, 109 Neb. 384, 191 N.W. 438 (1922).

17-917 Sewers; resolution to construct, purchase, or acquire; vote required.

Upon compliance with sections 17-913 to 17-916, the council or board of trustees may by resolution order the making, reconstruction, purchase or otherwise acquiring of any of the improvements provided for in section 17-913. The vote upon any such resolution shall be as required by section 17-616.

Source: Laws 1919, c. 189, § 5, p. 429; C.S.1922, § 4341; C.S.1929, § 17-532; R.S.1943, § 17-917; Laws 1947, c. 39, § 2, p. 152.

17-918 Sewers; construction; contracts; notice; bids; acceptance.

After ordering any such improvements as provided for in section 17-917, the council or board may enter into a contract for the construction of same in one or more contracts, but no work shall be done or contract let until notice to contractors has been published in a newspaper of general circulation, published in such city or village, and if there be no newspaper of general circulation published in said city or village, then in some newspaper of general circulation published in the county wherein such city or village is located. The notice shall be published in at least two issues of such paper and shall state the extent of the work, and the kinds of material to be bid upon, including in such notice all kinds of material mentioned in the resolution specified in section 17-913, the amount of the engineer's estimate of the cost of the said improvements, and the time when bids will be received. The work herein provided for shall be done under written contract with the lowest responsible bidder on the material selected after the bids are opened and in accordance with the requirements of the plans and specifications. The council or board may reject any or all bids received and advertise for new bids in accordance herewith.

Source: Laws 1919, c. 189, § 6, p. 429; Laws 1921, c. 281, § 2, p. 926; C.S.1922, § 4342; C.S.1929, § 17-533; R.S.1943, § 17-918; Laws 1975, LB 112, § 3.

A public body has discretion to award the contract to one other than the lowest of the responsible bidders whenever a submitted bid contains a relevant advantage. Rath v. City of Sutton, 267 Neb. 265, 673 N.W.2d 869 (2004).

By mandating that contracts be awarded to the lowest responsible bidder, the Nebraska Legislature is seeking to protect taxpayers, prevent favoritism and fraud, and increase competition in the bidding process by placing bidders on equal footing. Rath v. City of Sutton, 267 Neb. 265, 673 N.W.2d 869 (2004).

Determining the lowest responsible bidder is a two-step process. The first step is for the public body to determine which bidders are responsible to perform the contract. The second step focuses on which of the responsible bidders has submitted the lowest bid. Rath v. City of Sutton, 267 Neb. 265, 673 N.W.2d 869 (2004).

Determining the responsibility of bidders is a job for elected officials, and a court's only role is to review those decisions to make sure the public officials did not act arbitrarily, or from favoritism, ill will, or fraud. Rath v. City of Sutton, 267 Neb. 265, 673 N.W.2d 869 (2004).

In addition to a bidder's pecuniary ability, responsibility pertains to a bidder's ability and capacity to carry on the work, the bidder's equipment and facilities, the bidder's promptness, the quality of work previously done by him or her, the bidder's suitability to the particular task, and such other qualities as are found necessary to consider in order to determine whether or not, if awarded the contract, he or she could perform it strictly in accordance with its terms. Rath v. City of Sutton, 267 Neb. 265, 673 N.W.2d 869 (2004).

Public bodies do not act ministerially only, but exercise an official discretion when passing upon the question of the responsibility of bidders. Rath v. City of Sutton, 267 Neb. 265, 673 N.W.2d 869 (2004).

When responsible bidders submit identical bids, the public body must award the contract to the lowest of the responsible bidders. Rath v. City of Sutton, 267 Neb. 265, 673 N.W.2d 869 (2004).

Engineer's estimate of cost of improvements must be stated in notice. Hutton v. Village of Cairo, 159 Neb. 342, 66 N.W.2d 820 (1954).

17-919 Sewers; acceptance by engineer; approval; cost; assessments; notice.

After the completion of any such work or purchase or otherwise acquiring the system, the engineer shall file with the clerk of such city or village a certificate of acceptance, which acceptance shall be approved by the council or board by resolution. The council or board shall then require the engineer to make a complete statement of all the costs of any such improvement and a plat of the property in the district and a schedule of the amount proposed to be assessed against each separate piece of property in such district, which shall be filed with the city or village clerk within ten days from date of acceptance of the work, purchase or otherwise acquiring the system. The council or board shall then order the clerk to give notice that such plat and schedules are on file in his office and that all objections thereto, or to prior proceedings on account of errors, irregularities or inequalities, not made in writing and filed with the city or village clerk within twenty days after the first publication of such notice, shall be deemed to have been waived. Such notice shall be given by two publications in a newspaper of general circulation published in such city or village, but if no paper is published within such city or village, then such notice may be given by publication in some newspaper of general circulation in such city or village, and by posting in each of three public places in the city or village. Such notice shall state the time and place where objections, filed as herein provided for, shall be considered by the city council or village board.

Source: Laws 1919, c. 189, § 7, p. 430; C.S.1922, § 4343; C.S.1929, § 17-534; R.S.1943, § 17-919; Laws 1947, c. 39, § 3, p. 152; Laws 1963, c. 75, § 1, p. 278.

17-920 Sewers; assessments; hearing; equalization; payable in installments; interest.

The hearing on the proposed assessment shall be held by the city council or village board, sitting as a board of adjustment and equalization, at the time specified in such notice which shall be not less than twenty days nor more than thirty days after the date of first publication unless adjourned. Such session may be adjourned, with provisions for proper notice of such adjournment. At such meeting, the proposed assessment shall be adjusted and equalized with reference to benefits resulting from the improvement and shall not exceed such benefits; *Provided,* if any special assessment be payable in installments, each

installment shall draw interest payable semiannually or annually from the date of levy until due. Such delinquent installments shall draw interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, until paid.

Source: Laws 1919, c. 189, § 8, p. 430; C.S.1922, § 4344; C.S.1929, § 17-535; Laws 1935, c. 136, § 21, p. 534; C.S.Supp.,1941, § 17-535; R.S.1943, § 17-920; Laws 1949, c. 27, § 1, p. 100; Laws 1957, c. 34, § 1, p. 198; Laws 1959, c. 64, § 4, p. 288; Laws 1969, c. 51, § 52, p. 305; Laws 1980, LB 933, § 19; Laws 1981, LB 167, § 20.

Levy of special benefits, by the frontage rule, should be equal and uniform and levied on abutting property only. Such levy must not exceed the benefits to such property. Hurd v. Sanitary Sewer District No. 1 of Harvard, 109 Neb. 384, 191 N.W. 438 (1922).

17-921 Sewers; assessments; levy; collection.

After the equalization of such special assessments as herein required, the same shall be levied by the mayor and council or the board of village trustees, upon all lots or parcels of ground within the district specified which are benefited by reason of said improvement. The same may be relevied if, for any reason, the levy thereof is void or not enforceable and in an amount not exceeding the previous levy. Such levy shall be enforced as other special assessments, and any payments thereof under previous levies shall be credited to the person or property making the same. All assessments made for such purposes shall be collected in the same manner as general taxes and shall be subject to the same penalties.

Source: Laws 1919, c. 189, § 9, p. 430; C.S.1922, § 4345; C.S.1929, § 17-536.

Special assessments are a lien when levied and assessed. Belza v. Village of Emerson, 159 Neb. 651, 68 N.W.2d 272 (1955).

Where improvements are made, and property owner had opportunity to object when special assessments were determined by board, he cannot, after the levy is made, attack such levy collaterally, except for a jurisdictional defect in proceedings. Weilage v. City of Crete, 110 Neb. 544, 194 N.W. 437 (1923).

17-922 Sewers; assessments; interest; exempt property; cost; how paid.

No city council or village board shall cause to be assessed for any of the improvements herein provided, property by law not assessable, or property not included within the district defined in the preliminary resolution, and shall not assess property not benefited. The cost of sewers at the intersection of streets and alleys and opposite property belonging to the United States Government, or other property not assessable, may be included with the cost of the rest of the work and may be assessed on the property within the district, if benefited by the improvement to such extent, or may be paid from unappropriated money in the general fund. The cost of the improvements shall draw interest from the date of acceptance thereof by the city council or village board.

Source: Laws 1919, c. 189, § 10, p. 431; C.S.1922, § 4346; C.S.1929, § 17-537; R.S.1943, § 17-922; Laws 1969, c. 51, § 53, p. 305.

In absence of a jurisdictional defect in proceedings, where property owner had opportunity but failed to present his objections to the municipal body making assessments for local improvements, he cannot thereafter attack collaterally the levy so made. Weilage v. City of Crete, 110 Neb. 544, 194 N.W. 437 (1923).

In levying special assessments for construction of sewers, they should be confined to abutting property only. Hurd v. Sanitary Sewer District No. 1 of Harvard, 109 Neb. 384, 191 N.W. 438 (1922).

17-923 Sewers; assessments; when due; interest.

All special assessments provided for in section 17-921 shall become due in fifty days after the date of the levy and may be paid within that time without interest, but if not so paid they shall bear interest thereafter until delinquent. Such assessment shall become delinquent in equal annual installments over such period of years as the council or board of trustees may determine at the time of making the levy. Delinquent installments shall bear interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, until paid and shall be collected in the usual manner for the collection of taxes.

Source: Laws 1919, c. 189, § 11, p. 431; C.S.1922, § 4347; Laws 1923, c. 143, § 2, p. 356; C.S.1929, § 17-538; R.S.1943, § 17-923; Laws 1949, c. 27, § 2, p. 100; Laws 1953, c. 35, § 1, p. 126; Laws 1959, c. 64, § 5, p. 288; Laws 1969, c. 51, § 54, p. 306; Laws 1980, LB 933, § 20; Laws 1981, LB 167, § 21.

17-924 Sewers; assessments; sinking fund; purpose.

All the special assessments provided for in section 17-921 shall, when levied, constitute a sinking fund for the purpose of paying the cost of the improvements herein provided for with allowable interest thereon, and shall be solely and strictly applied to such purpose to the extent required; but any excess thereof may be by the council or board, after fully discharging the purposes for which levied, transferred to such other fund or funds as the council may deem advisable.

Source: Laws 1919, c. 189, § 13, p. 432; C.S.1922, § 4349; C.S.1929, § 17-539.

17-925 Sewers; bonds; term; rate of interest; partial payments; final payment; contractor; interest; special assessments; tax authorized.

For the purpose of paying the cost of the improvements herein provided for, the city council of any such city or board of trustees of any such village, after such improvements have been completed and accepted, shall have the power to issue negotiable bonds of any such city or village, to be called Sewer Bonds, payable in not exceeding twenty years and bearing interest payable annually or semiannually, which may either be sold by the city or village or delivered to the contractor in payment for the work, but in either case for not less than their par value. For the purpose of making partial payments as the work progresses, warrants may be issued by the mayor and council or by the board of trustees upon certificates of the engineer in charge showing the amount of work completed and materials necessarily purchased and delivered for the orderly and proper continuation of the project, in a sum not exceeding ninety-five percent of the cost thereof and upon the completion and acceptance of the work issue a final warrant for a balance of the amount due the contractor, which warrants shall be redeemed and paid upon the sale of the bonds issued and sold as aforesaid. The city or village shall pay to the contractor interest at the rate of eight percent per annum on the amounts due on partial and final payments beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the governing body, and running until the date that the warrant is tendered to the contractor. All special assessments which may be levied upon property specially benefited by such work or improvements shall, when collected, be set aside and constitute a sinking fund

for the payment of the interest and principal of said bonds. There shall be levied annually upon all the taxable property in said city or village a tax, which, together with such sinking fund derived from special assessments, shall be sufficient to meet payments of interest and principal as the same become due. Such tax shall be known as the sewer tax and shall be payable annually in money.

Source: Laws 1919, c. 189, § 14, p. 432; C.S.1922, § 4350; C.S.1929, § 17-540; Laws 1931, c. 34, § 1, p. 126; Laws 1935, c. 35, § 1, p. 146; C.S.Supp.,1941, § 17-540; R.S.1943, § 17-925; Laws 1963, c. 70, § 2, p. 272; Laws 1969, c. 51, § 55, p. 306; Laws 1974, LB 636, § 4.

Cost of main sewers in excess of special benefits can only be paid for by means of general taxation. Hurd v. Sanitary Sewer District No. 1 of Harvard, 109 Neb. 384, 191 N.W. 438 (1922).

17-925.01 Sewers; water utilities; maintenance and repair; tax authorized; service rate in lieu of tax; lien.

The mayor and council of any city of the second class or the board of trustees of any village is hereby authorized, after the establishment of a system of sewerage and at the time of levying other taxes for city or village purposes, to levy a tax of not more than three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village for the purpose of creating a fund to be used for the maintenance and repairing of any sewer or water utilities in such city or village. In lieu of the levy of such tax, the mayor and city council of any such city or the board of trustees of any village may establish by ordinance such rates for such sewer service as may be deemed by them to be fair and reasonable, to be collected from either the owner or the person, firm, or corporation requesting the services at such times, either monthly, quarterly, or otherwise, as may be specified in the ordinance. All sewer charges shall be a lien upon the premises or real estate for which the same is used or supplied. Such lien shall be enforced in such manner as the local governing body provides by ordinance. The charges thus made when collected shall be placed either in a separate fund or in a combined water and sewer fund and used exclusively for the purpose of maintenance and repairs of the sewer system, or the water and sewer system, in such city or village.

Source: Laws 1903, c. 22, § 9, p. 258; R.S.1913, § 5048; C.S.1922, § 4217; Laws 1923, c. 188, § 1, p. 432; C.S.1929, § 17-156; Laws 1943, c. 33, § 2, p. 151; R.S.1943, § 17-925.01; Laws 1947, c. 51, § 2, p. 172; Laws 1951, c. 37, § 1, p. 138; Laws 1953, c. 287, § 22, p. 944; Laws 1979, LB 187, § 59; Laws 1992, LB 719A, § 61; Laws 1997, LB 67, § 1.

17-925.02 Sewers; rental charges; collection.

Any city of the second class or village in the State of Nebraska may make rental charges for the use of an established municipal sewerage system on a fair and impartial basis for services rendered. They shall be collected at the same time and in the same manner as the water charges by the same officials.

Source: Laws 1947, c. 43, § 1, p. 159.

17-925.03 Sewers; rental charges; reduction in taxes.

The revenue from such charges shall only be used for the abatement or the reduction of ad valorem taxes being levied or to be levied for the payment of bonds outstanding or to be issued for the construction of or additions to such sewerage system.

Source: Laws 1947, c. 43, § 2, p. 159.

17-925.04 Sewers; rental charges; cumulative to service rate for maintenance and repair.

The charges permitted by sections 17-925.02 to 17-925.04 shall be in addition to the charges permitted by section 17-925.01 for the maintenance and repair of such system.

Source: Laws 1947, c. 43, § 3, p. 159.

(c) CEMETERIES

17-926 Cemetery; acquisition; condemnation; procedure.

Any city of the second class or village through its mayor and city council or board of trustees may, by eminent domain, condemn, purchase, hold, and pay for land not exceeding one hundred sixty acres outside the corporate limits of any city of the second class or village for the purpose of the burial of the dead. The mayor and council or chairperson and board of trustees are also empowered and authorized to receive by gift or devise real estate for cemetery purposes. In the event any city of the second class or village through its mayor and council or chairperson and board of trustees desires to purchase any cemetery belonging to any corporation, partnership, limited liability company, association, or individual, which cemetery has already been properly surveyed and platted, and is used for cemetery purposes, then the mayor and city council or chairperson and board of trustees are hereby authorized and empowered to purchase the cemetery. In the event the owner or owners of such cemetery desired to be purchased by any city of the second class or village will not or cannot sell and convey same to the city or village or in the event the owner or owners of such cemetery cannot agree upon the price to be paid for the cemetery, the mayor and council of any city of the second class or the board of trustees of any village shall by resolution declare the necessity for the acquisition thereof by exercise of the power of eminent domain. The adoption of the resolution shall be deemed conclusive evidence of such necessity. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1929, c. 46, § 1, p. 195; C.S.1929, § 17-541; R.S.1943, § 17-926; Laws 1951, c. 101, § 60, p. 474; Laws 1963, c. 70, § 3, p. 273; Laws 1993, LB 121, § 136.

17-927 Repealed. Laws 1951, c. 101, § 127.

17-928 Repealed. Laws 1951, c. 101, § 127.

17-929 Repealed. Laws 1951, c. 101, § 127.

17-930 Repealed. Laws 1951, c. 101, § 127.

17-931 Repealed. Laws 1951, c. 101, § 127.

17-932 Repealed. Laws 1951, c. 101, § 127.

17-933 Cemetery; acquisition; title.

Where such real estate is acquired by gift or devise, the title shall vest in the city or village upon the conditions imposed by the donor and upon acceptance by the mayor and city council or chairman and board of trustees. Where such real estate is acquired by purchase or by virtue of exercise of the right of eminent domain, the title shall vest absolutely in such city or village. Nothing in sections 17-933 to 17-937 shall be construed in any manner to affect cemeteries belonging to any religious organization or society, lodge or fraternal society.

Source: Laws 1929, c. 46, § 8, p. 197; C.S.1929, § 17-548.

17-934 Cemetery; existing cemetery association; transfer to; conditions.

In any such city or village where there exists a duly perfected cemetery association, formed under the provisions of sections 12-501 to 12-529, and in the further event that said cemetery association, formed as aforesaid, shall propose to the mayor and council of such city or to the chairman and board of trustees of such village by means of a resolution duly enacted by such cemetery association, signed by its president and attested by its secretary, signifying the willingness of said cemetery association to exercise control and management of any cemetery belonging to such city or village, then and in that event, said mayor and council, or said chairman and board of trustees shall submit at the next regular municipal election the question of the management and control over said cemetery under the conveyance made by the proper authorities of such city or village. If a majority of the votes cast at such election shall favor the transfer of the management and control of the cemetery belonging to such city or village to the said cemetery association, the management and control of such cemetery shall be relinquished forthwith by the proper authorities of such city or village to said cemetery association. Where the real estate of the cemetery of such city or village shall have been acquired by gift or devise, the relinquishment of the management and control to such cemetery association shall be subject to the conditions imposed by the donor; and upon acceptance by the president and secretary of such cemetery association, said conditions shall be binding upon such cemetery association.

Source: Laws 1929, c. 46, § 8, p. 198; C.S.1929, § 17-548.

17-935 Existing cemetery association; transfer; deeds; how executed.

Subsequent to the relinquishment by the mayor and council of such city, or the chairman and board of trustees of such village to the proper officers of such cemetery association, as aforesaid, the deeds to all burial lots executed by the trustees of such cemetery association, through its president and secretary, shall as a matter of course be signed, sealed, acknowledged, and delivered by the proper officers of such city or village as other real property of such city or village is conveyed, except that the transfer of such burial lots shall not require a vote of a majority of the electors of such city or village to make title to the same valid and legal in the purchaser or purchasers thereof.

Source: Laws 1929, c. 46, § 8, p. 198; C.S.1929, § 17-548.

17-936 Existing cemetery association; transfer of funds.

In case of the transfer of the management and control of such village or city cemetery, as provided in sections 17-934 and 17-935, the cemetery board erected under section 12-401 shall have no jurisdiction over the management and control of such cemetery after said transfer. In the event of such transfer, as aforesaid, any funds or any money to the credit of the cemetery fund created under section 12-402, shall be paid over by the village treasurer of such village or by the city treasurer of such city to the treasurer of the cemetery association; and all endowments contemplated under section 12-301 to such village or city cemetery shall vest absolutely in the cemetery association to whom the control and management of such cemetery shall have been transferred.

Source: Laws 1929, c. 46, § 8, p. 199; C.S.1929, § 17-548; R.S.1943, § 17-936; Laws 1959, c. 49, § 3, p. 239.

17-937 Existing cemetery association; trustees; oath; bond; vacancy; how filled.

Each of the trustees of such cemetery association shall thereupon forthwith qualify by subscribing to an oath in the office of the city clerk or village clerk, as the case may be, substantially as follows: That he will faithfully, impartially, and honestly perform his duties as such trustee; *provided further*, that whenever the trustees of any cemetery association organized under sections 17-926 to 17-939, shall receive the gift of any property, real or personal, in trust, for the perpetual care of said cemetery, or anything connected therewith, said trustees shall, upon the enactment of bylaws by the association to that effect, require the treasurer of said association to give a bond to said association in a sum equal to the amount of said trust fund and other personal property, conditioned for the faithful administration of said trust and for the care of said funds and property. Said bonds shall be approved by the mayor of the city and by the chairman of the board of trustees of the village and shall remain on file with and in the custody of the city clerk or the village clerk, as the case may be, of such city or village. The premium on the bond of the treasurer shall be paid from available cemetery funds credited to or in the hands of said cemetery association. In the event of a vacancy occurring among the members of the board of trustees of such cemetery association, such vacancy shall be filled in the like manner as the original member of said board of trustees was elected in accordance with the provisions of section 12-501. Such trustee elected as aforesaid to fill such vacancy shall subscribe to the oath as hereinbefore provided. Such appointment to fill such vacancy shall continue until the successor of such trustee shall be duly elected and qualified.

Source: Laws 1929, c. 46, § 8, p. 199; C.S.1929, § 17-548.

17-938 Cemetery; maintenance; tax; forfeiture of lot; resale; reclamation of lot; procedure.

(1) The mayor and city council or the board of trustees of such city or village are hereby empowered to levy a tax not to exceed five and two-tenths cents on each one hundred dollars upon the taxable value of all taxable property in such city or village for any one year for improving, adorning, protecting, and caring for such cemetery.

(2) Except as provided in subsection (3) of this section, all certificates to any lot or lots upon which no interments have been made and which have been sold for burial purposes under the provisions of section 17-941 may be declared

forfeited and subject to resale if, for more than three consecutive years, all charges and liens as provided herein or by any of the rules, regulations, or bylaws of the association are not promptly paid by the holders of such certificates. All certificates to any lot or lots sold shall contain a forfeiture clause to the effect that if no interment has been made on the lot or lots and all liens and charges have not been paid as provided in this subsection, by ordinance, or in the bylaws of the association, such certificate and the rights under the same may, at the option of the cemetery board, with the sanction of the mayor and council or of the chairperson and board of trustees, as the case may be, be declared null and void and the lot or lots shall be subject to resale as in the first instance.

(3) When any lot has been transferred by warranty deed or by a deed conveying a fee simple title, but there has been no burial in any such lot or subdivision thereof and no payment of annual assessments for a period of three years, the cemetery board, with the sanction of the mayor and council or of the chairperson and board of trustees, as the case may be, may reclaim the unused portion of such lot or subdivision after notifying the record owner or his or her heirs or assigns, if known, by certified mail and publishing notice of its intention to do so. Such notice shall be published once each week for four weeks in a newspaper of general circulation throughout the county in which the cemetery is located, shall describe the lot or subdivision proposed to be reclaimed, and shall be addressed to the person in whose name such portion stands of record or, if there is no owner of record, to all persons claiming any interest in such lot or subdivision. If no person appears to claim such lot or subdivision and pay all delinquent assessments with interest within fifteen days after the last date of such publication, the cemetery board may by resolution reclaim such lot or subdivision. Such reclamation shall be complete upon a filing of a verified copy of such resolution, together with proof of publication, in the office of the register of deeds.

Source: Laws 1929, c. 46, § 9, p. 200; C.S.1929, § 17-549; R.S.1943, § 17-938; Laws 1953, c. 287, § 23, p. 944; Laws 1955, c. 43, § 1, p. 158; Laws 1971, LB 38, § 1; Laws 1979, LB 249, § 1; Laws 1979, LB 187, § 60; Laws 1980, LB 599, § 7; Laws 1986, LB 808, § 1; Laws 1992, LB 719A, § 62.

17-939 Cemetery; acquisition; bonds; interest; approval of electors required.

The mayor and council of any such city of the second class or the board of trustees of any such village are hereby authorized to issue bonds in a sum not exceeding ten thousand dollars for the purpose of acquiring title by purchase or by virtue of eminent domain to land now used for cemetery purposes and that may be hereafter acquired for any necessary addition to any existing cemetery. No such bonds shall be issued until the question of issuing the same shall be submitted to the electors of any such city or village at a general election thereof, or at a special election called for the purpose of submitting the proposition of issuing such bonds, and unless at such election a majority of the electors voting on the proposition shall have voted in favor of issuing such bonds. Such bonds shall be payable in not exceeding ten years from date and shall bear interest payable annually or semiannually. Notice of such election shall be given by publication in a legal newspaper published or of general circulation in the city or village for three successive weeks, the final publication to be not more than ten days prior to the date of such election, as therein

specified. The election shall be governed, insofar as applicable, by the laws of this state governing general elections.

Source: Laws 1929, c. 46, § 10, p. 200; C.S.1929, § 17-550; R.S.1943, § 17-939; Laws 1969, c. 51, § 56, p. 307; Laws 1971, LB 534, § 17; Laws 1996, LB 299, § 14.

17-940 Cemetery; improvement.

The mayor and council or board of trustees may survey, plat, map, grade, fence, ornament, and otherwise improve all burial and cemetery grounds and avenues leading thereto owned by such city or village. They may construct walks and protect ornamental trees therein, and provide for paying the expenses thereof.

Source: Laws 1879, § 69, XXXIII, p. 218; Laws 1881, c. 23, § 8, XXXIII, p. 186; Laws 1885, c. 20, § 1, XXXIII, p. 177; Laws 1887, c. 12, § 1, XXXIII, p. 305; R.S.1913, § 5167; C.S.1922, § 4354; C.S. 1929, § 17-552.

17-941 Cemetery; lots; conveyance; recording.

The mayor and council or board of trustees may convey cemetery lots by certificate signed by the mayor and chairman, and countersigned by the clerk, under the seal of the city or village, specifying that the person to whom the same is issued is the owner of the lot or lots described therein by number as laid down on such map or plat, for the purpose of interment; and such certificate shall vest in the proprietor, his or her heirs and assigns, a right in fee simple to such lot for the sole purpose of interment, under the regulation of the city council or board of trustees. Such certificate shall be entitled to be recorded in the office of the register of deeds of the proper county without further acknowledgment, and such description of lots shall be deemed and recognized as a sufficient description thereof.

Source: Laws 1879, § 69, XXXIV, p. 218; Laws 1881, c. 23, § 8, XXXIV, p. 186; Laws 1885, c. 20, § 1, XXXIV, p. 177; Laws 1887, c. 12, § 1, XXXIV, p. 306; R.S.1913, § 5168; C.S.1922, § 4355; C.S.1929, § 17-553; R.S.1943, § 17-941; Laws 1971, LB 32, § 4.

17-942 Cemetery; lots; ownership and use; regulations.

The mayor and council or board of trustees may limit the number of cemetery lots which shall be owned by the same person at the same time. They may prescribe rules for enclosing, adorning, and erecting monuments and tombstones on cemetery lots. They may prohibit any diversion of the use of such lots and any improper adornment thereof; but no religious test shall be made as to the ownership of lots, the burial therein, or the ornamentation of graves or of such lots.

Source: Laws 1879, § 69, XXXV, p. 218; Laws 1881, c. 23, § 8, XXXV, p. 187; Laws 1885, c. 20, § 1, XXXV, p. 178; Laws 1887, c. 12, § 1, XXXV, p. 306; R.S.1913, § 5169; C.S.1922, § 4356; C.S.1929, § 17-554.

17-943 Cemetery; protection; rules and regulations.

The mayor and council or board of trustees may pass rules and ordinances imposing penalties and fines not exceeding one hundred dollars, regulating, protecting, and governing the cemetery, the owners of lots therein, visitors thereof, and trespassers therein. And the officers of such city or village shall have as full jurisdiction and power in the enforcing of such rules and ordinances as though they related to the corporation itself.

Source: Laws 1879, § 69, XXXVI, p. 218; Laws 1881, c. 23, § 8, XXXVI, p. 187; Laws 1885, c. 20, § 1, XXXVI, p. 178; Laws 1887, c. 12, § 1, XXXVI, p. 306; R.S.1913, § 5170; C.S.1922, § 4357; C.S.1929, § 17-555.

17-944 Cemetery association; formation; when authorized.

Whenever, in cities of the second class and villages, one-fifth of the resident lot owners of any cemetery under the control of such city shall so desire it, it shall be lawful for such lot owners to associate themselves into and form a cemetery association, as provided by sections 12-501 to 12-529.

Source: Laws 1887, c. 15, § 1, p. 330; R.S.1913, § 5171; C.S.1922, § 4358; C.S.1929, § 17-556.

The section does not apply to cities having over five thousand inhabitants. State ex rel. Wyuka Cemetery Assn. v. Bartling, 23 Neb. 421, 36 N.W. 811 (1888).

17-945 Cemetery association; trustees; conveyances; recording.

Upon the formation of such cemetery association, the lot owners in such cemetery shall elect five of their number as trustees, to whom shall be given the general care, management, and supervision of such cemetery. The mayor or chairman of such city or village shall, by virtue of his office, be a member of the board of trustees, and it shall be his duty to make, execute, and deliver to purchasers of lots deeds therefor, when requested by such board of trustees. Such deed shall be executed under the corporate seal of such city, and countersigned by the clerk, specifying that the person to whom the same is issued is the owner, for the purposes of interment, of the lot or lots described therein by numbers, as laid down on the map or plat of such cemetery. Such deed shall vest in the proprietor, his or her heirs or assigns, a right in fee simple to such lot for the sole purpose of interment, under the regulations of the board of trustees; and such deed shall be entitled to be recorded in the office of the county clerk of the proper county without further acknowledgment or authentications, and such description of lots shall be deemed and recognized as a sufficient description thereof.

Source: Laws 1887, c. 15, § 2, p. 330; R.S.1913, § 5172; C.S.1922, § 4359; C.S.1929, § 17-557.

17-946 Cemetery association; powers of board of trustees; income; use.

(1) The board of trustees of a cemetery association formed pursuant to section 17-944 shall have power:

(a) To limit the number of cemetery lots that shall be owned by the same person at the same time;

(b) To prescribe rules for enclosing, adorning, and erecting monuments and tombstones on cemetery lots;

(c) To prohibit any diversions of the use of such lots, and any improper adornment thereof, but no religious tests shall be made as to the ownership of lots, the burial therein, or the ornamentation of graves or of such lots; and

(d) To pass rules and ordinances imposing penalties and fines, not exceeding one hundred dollars, regulating, governing, and protecting the cemetery, the owners of lots therein, visitors thereof, and trespassers therein.

(2) The officers of a city of the second class or village in which a cemetery association has been formed pursuant to such section shall have as full jurisdiction and power in the enforcing of rules and ordinances passed pursuant to subsection (1) of this section as though such rules and ordinances related to the corporation of such city or village itself.

(3) All money received from sale of lots in any such cemetery, or which may come to it by donation, bequest, or otherwise, shall be devoted exclusively to the care, management, adornment, and government of such cemetery itself and shall be expended exclusively for such purposes under the direction of the association's board of trustees, except that in addition, and notwithstanding any provision of Chapter 12, article 5, the principal of the fund that is attributable to money received from the sale of lots, or attributable to money which has come to the fund by donation, bequest, or otherwise that does not prohibit such use, may be used for the purchase and development of additional land to be used for cemetery purposes as long as no more than twenty-five percent of such principal is so used in any fiscal year and no more than thirty-five percent of such principal is so used in any period of ten consecutive fiscal years.

(4) This section does not limit the use of any money that comes to the city or village by donation, bequest, or otherwise that is not designated to be credited to the perpetual fund or that allows greater use for purchase or development of additional land to be used for cemetery purposes.

Source: Laws 1887, c. 15, §§ 3, 4, 5, p. 331; R.S.1913, §§ 5173, 5174, 5175; C.S.1922, §§ 4360, 4361, 4362; C.S.1929, §§ 17-558, 17-559, 17-560; R.S.1943, § 17-946; Laws 2005, LB 262, § 3.

17-947 Cemetery association; formation; funds; transfer to.

Upon the organization of such cemetery association as herein provided, all property and money under the control of the city council or village trustees shall vest in such cemetery association for the purposes aforesaid, and all money in the control of such city council or village trustees shall be turned over to the board of trustees of such cemetery association.

Source: Laws 1887, c. 15, § 6, p. 332; R.S.1913, § 5176; C.S.1922, § 4363; C.S.1929, § 17-561.

(d) RECREATION CENTERS

17-948 Recreation and conservation; real estate; acquisition by gift or purchase; title.

Cities of the second class and villages are empowered and authorized to receive, by gift or devise, and to purchase real estate within or without their corporate limits, for the purpose of parks, public grounds, swimming pools or dams, either for recreational or conservational purposes. Where such real estate is acquired by gift or devise the title shall be vested in the city or village,

upon the conditions imposed by the donor and upon the acceptance by the mayor and city council or the board of trustees; and where such real estate is acquired by purchase the title shall vest absolutely in such city or village.

Source: Laws 1937, c. 35, § 1, p. 162; C.S.Supp.,1941, § 17-590; R.S. 1943, § 17-948; Laws 1969, c. 86, § 3, p. 432.

17-949 Recreation and conservation; real estate; regulation and control; penalties authorized.

Whether the title to such real estate shall be acquired by gift, devise or purchase, the jurisdiction of the city council, park board or the board of trustees shall at once be extended over such real estate; and the city council, park board or board of trustees shall have power to enact bylaws, rules or ordinances for the protection and preservation of any real estate acquired as herein contemplated, and to provide rules and regulations for the closing of said park or swimming pool, in whole or in part, to the general public, and charge admission thereto during such closing, either by the municipality or by any person, persons or corporation leasing same. They may provide suitable penalties for the violation of such bylaws, rules or ordinances; and the police power of any such city or village, that shall acquire any real estate as herein contemplated, shall be at once extended over the same.

Source: Laws 1937, c. 35, § 2, p. 162; C.S.Supp.,1941, § 17-591; R.S. 1943, § 17-949; Laws 1961, c. 52, § 1, p. 195.

17-950 Recreation and conservation; real estate; acquisition; purposes; bonds; interest; approval of electors required.

The mayor and council of any such city, or the board of trustees of any such village, are hereby authorized to issue bonds for the purpose of acquiring title to real estate, as contemplated by sections 17-948 and 17-949, and for the purpose of improving, equipping, and furnishing such real estate as parks and recreational grounds and for the purpose of building swimming pools and dams. No such bonds shall be issued until the question of issuing the same shall have been submitted to the electors of such city or village at a general election therein, or at a special election called for the purpose of submitting a proposition to issue such bonds, and unless at such election a majority of the electors voting shall have voted in favor of issuing such bonds. The question of bond issues in such cities and villages, when defeated, shall not be resubmitted in substance for a period of six months from and after the date of such election. Such bonds shall be payable in not exceeding twenty years from their date, and shall bear interest payable annually or semiannually.

Source: Laws 1937, c. 35, § 3, p. 163; C.S.Supp.,1941, § 17-592; R.S. 1943, § 17-950; Laws 1955, c. 44, § 1, p. 159; Laws 1965, c. 71, § 1, p. 292; Laws 1969, c. 51, § 57, p. 308; Laws 1971, LB 534, § 18; Laws 1979, LB 187, § 61; Laws 1982, LB 692, § 2.

17-951 Facilities; maintenance and improvement; tax authorized.

The mayor and city council of any such city or the board of trustees of any such village which has already acquired or hereafter acquires land for park purposes or recreational facilities or which has already built or hereafter builds swimming pools, recreational facilities, or dams may each year make and levy a tax upon the taxable value of all the taxable property in such city or village. The

levy shall be collected and put into the city or village treasury and shall constitute the park and recreation fund of such city or village. The funds so levied and collected shall be used for amusements, for laying out, improving, and beautifying such parks, for maintaining, improving, managing, and beautifying such swimming pools, recreational facilities, or dams, and for the payment of salaries and wages of persons employed in the performance of such labor.

Source: Laws 1937, c. 35, § 4, p. 163; C.S.Supp.,1941, § 17-593; R.S. 1943, § 17-951; Laws 1953, c. 36, § 1, p. 127; Laws 1969, c. 86, § 4, p. 432; Laws 1979, LB 187, § 62; Laws 1992, LB 719A, § 63.

17-952 Board of commissioners; members; duties.

In each city or village, where land for park purposes or recreational facilities is acquired, or swimming pools, recreational facilities, or dams may be built, the mayor and city council of the city, or the trustees of the village, may provide by ordinance for the creation of a board of park commissioners, or board of park and recreation commissioners at the option of the city or village, which, in either case, shall be composed of not less than three members, who shall be residents of the city or village, and who shall have charge of all parks and recreational facilities belonging to the cities or villages, and shall have the power to establish rules for the management, care, and use of the same. Where such board of park commissioners or board of park and recreation commissioners has been appointed and qualified, all accounts against the park fund or park and recreation fund, as the case may be, shall be audited by such board, and warrants against the fund shall be drawn by the chairperson of the board, and warrants so drawn shall be paid by the city or village treasurer out of the fund.

Source: Laws 1937, c. 35, § 5, p. 163; C.S.Supp.,1941, § 17-594; R.S. 1943, § 17-952; Laws 1969, c. 86, § 5, p. 432; Laws 2005, LB 626, § 4.

(e) PUBLIC BUILDINGS

17-953 Public buildings; acquisition or construction; approval of electors required; exception.

Cities of the second class and villages are hereby authorized and empowered to (1) purchase, (2) accept by gift or devise, (3) purchase real estate upon which to erect, and (4) erect a building or buildings for an auditorium, fire station, municipal building, or community house for housing municipal enterprises and social and recreation purposes, and other public buildings, including the construction of buildings authorized to be constructed by Chapter 72, article 14, and including construction of buildings to be leased in whole or in part by the city or village to any other political or governmental subdivision of the State of Nebraska authorized by law to lease such buildings, and maintain, manage, and operate the same for the benefit of the inhabitants of said cities or villages. Except as provided in section 17-953.01, before any such purchase can be made or building erected, the question shall be submitted to the electors of such city or village at a general municipal election or at an election duly called for that

purpose, or as set forth in section 17-954, and be adopted by a majority of the electors voting on such question.

Source: Laws 1935, c. 37, § 1, p. 151; C.S.Supp.,1941, § 17-167; R.S. 1943, § 17-953; Laws 1947, c. 40, § 1, p. 153; Laws 1955, c. 45, § 2, p. 162; Laws 1969, c. 97, § 1, p. 465; Laws 1981, LB 220, § 1.

17-953.01 Purchase or construction of public buildings without bond issue; remonstrance; procedure.

If the funds to be used to finance the purchase or construction of a building under section 17-953 are available other than through a bond issue, then either:

(1) Notice of the proposed purchase or construction shall be published in a newspaper of general circulation in the city or village and no election shall be required to approve the purchase or construction unless within thirty days after the publication of the notice a remonstrance against the purchase or construction is signed by registered voters of the city or village equal in number to fifteen percent of the registered voters of the city or village voting at the last regular municipal election held therein and is filed with the governing body of the city or village. If the date for filing the remonstrance falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the thirty-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day. If a remonstrance with the necessary number of qualified signatures is timely filed, the question shall be submitted to the voters of the city or village at a general municipal election or a special election duly called for that purpose. If the purchase or construction is not approved, the property involved shall not then, nor within one year following the election, be purchased or constructed; or

(2) The governing body may proceed without providing the notice and right of remonstrance required in subdivision (1) of this section if the property can be purchased below the fair market value as determined by an appraisal, and there is a willing seller, and the purchase price is less than twenty-five thousand dollars. The purchase shall be approved by the governing body after notice and public hearing as provided in section 18-1755.

Source: Laws 1981, LB 220, § 2; Laws 1993, LB 59, § 3; Laws 1995, LB 197, § 2.

17-954 Public buildings; purchase or construction; bonds; approval of electors required; exception.

The mayor and council of such city or the chairman and board of trustees of such village, as the case may be, adopting the proposition to make such purchase or erect such building or buildings for the purposes set forth in section 17-953 shall have the power to borrow money and pledge the property and credit of the city or village upon its negotiable bonds; *Provided,* no such bonds shall be issued until after the same have been authorized by a majority vote of the electors voting on the proposition of their issuance, at a general municipal election or at a special election called for the submission of such proposition; *and provided further,* the question of such purchase or erection of such a building or buildings, as set forth in section 17-953, and the question of the issuance of the negotiable bonds referred to in this section may be submitted as one question at a general municipal or special election if so

ordered by resolution or ordinance. Notice of the time and place of said election shall be given by publication in some legal newspaper printed in or of general circulation in such city or village three successive weeks immediately prior thereto. No such election for the issuance of such bonds shall be called until a petition therefor signed by at least ten percent of the legal voters of said city or village has been presented to the council or to the board of trustees. The number of voters voting at the last regular municipal election prior to the presenting of such petition shall be deemed the number of votes in said city or village for the purpose of determining the sufficiency of such petition. The question of bond issues for such purpose in such cities or villages when defeated shall not be resubmitted for six months from and after the date of such election; *Provided,* that when the building to be constructed is to be used by the State of Nebraska or its agency or agencies under a lease authorized by Chapter 72, article 14, or the building is to be leased by any other political or governmental subdivision of the State of Nebraska, when the combined area of the building to be leased by the state or its agency or agencies and the political or governmental subdivision of the State of Nebraska is more than fifty percent of the area of the building, and when such sum does not exceed two million dollars then no such vote of the electors will be required.

Source: Laws 1935, c. 37, § 2, p. 151; C.S.Supp.,1941, § 17-168; R.S. 1943, § 17-954; Laws 1947, c. 40, § 2, p. 154; Laws 1969, c. 97, § 2, p. 466.

17-955 Public buildings; maintenance; tax.

The mayor and council of cities of the second class and chairperson and board of trustees of villages shall have the power to levy an annual tax not to exceed seven cents on each one hundred dollars upon the taxable value of the taxable property in such cities or villages for the purpose of maintaining an auditorium, municipal building, or community house and shall, by ordinance, determine and declare how it shall be managed.

Source: Laws 1935, c. 37, § 3, p. 152; C.S.Supp.,1941, § 17-169; R.S. 1943, § 17-955; Laws 1947, c. 40, § 3, p. 155; Laws 1953, c. 287, § 24, p. 930; Laws 1957, c. 35, § 1, p. 199; Laws 1979, LB 187, § 63; Laws 1992, LB 1063, § 9; Laws 1992, Second Spec. Sess., LB 1, § 9.

(f) REFRIGERATION

17-956 Cold storage plants; construction and operation; power.

Cities of the second class and villages shall have the power to purchase, construct, maintain and improve cold storage or refrigeration plants for the use of their respective municipalities and the inhabitants thereof.

Source: Laws 1941, c. 24, § 1, p. 118; C.S.Supp.,1941, § 17-801.

17-957 Cold storage plants; construction; cost; tax; bonds.

The cost of such utilities may be defrayed by the levy of a tax of not to exceed three and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property within the corporate limits of such city or village in any

one year for a cold storage or refrigeration plant or, when such tax is insufficient for the purpose, by the issuance of bonds of the municipality.

Source: Laws 1941, c. 24, § 2, p. 118; C.S.Supp.,1941, § 17-802; R.S. 1943, § 17-957; Laws 1953, c. 287, § 25, p. 945; Laws 1979, LB 187, § 64; Laws 1992, LB 1063, § 10; Laws 1992, Second Spec. Sess., LB 1, § 10.

17-958 Cold storage plants; bonds; approval of electors; interest; redemption.

The question of issuing bonds for any purpose contemplated by sections 17-956 to 17-960 shall be submitted to the electors at any election held for that purpose after not less than thirty days' notice has been given by publication in some legal newspaper published in and of general circulation in such municipality or, if no legal newspaper is published therein, by publication in some legal newspaper published in the county in which such city or village is located. If there is no legal newspaper published in the county wherein such city or village is located, the publication shall be in a legal newspaper of general circulation in the county. Such bonds may be issued only when a majority of the electors voting on the question favor their issuance. They shall bear interest, payable annually or semiannually, and shall be payable any time the municipality may determine at the time of their issuance but in not more than twenty years after their issuance. The aggregate amount of bonds that may be issued for the construction or purchase of a cold storage or refrigeration plant shall not exceed five percent of the taxable valuation of all the property in such city or village subject to taxation.

Source: Laws 1941, c. 24, § 3, p. 118; C.S.Supp.,1941, § 17-803; R.S. 1943, § 17-958; Laws 1969, c. 51, § 58, p. 308; Laws 1971, LB 534, § 19; Laws 1986, LB 960, § 9; Laws 1992, LB 719A, § 64.

17-959 Cold storage plants; operation and extension; tax.

The council or board of trustees, as the case may be, shall levy annually a sufficient tax to maintain, operate, and extend any such cold storage or refrigeration plant and to provide for the payment of the interest on, and principal of, any bonds that may have been issued as herein provided.

Source: Laws 1941, c. 24, § 3, p. 119; C.S.Supp.,1941, § 17-803.

17-960 Cold storage plants; management; rates.

When any cold storage or refrigeration plant shall have been established, the municipality shall provide by ordinance for the management thereof, and the rates to be charged and the manner of payment for such cold storage or refrigeration plant service to be furnished. In municipalities maintaining a system of waterworks, and having a water commissioner, he shall have charge of the cold storage or refrigeration plant herein provided for, unless the local governing body shall otherwise provide by the ordinance which shall establish rules and regulations to govern and control said utility.

Source: Laws 1941, c. 24, § 4, p. 119; C.S.Supp.,1941, § 17-804.

(g) MEDICAL AND HOUSING FACILITIES

17-961 Facility; acquisition or construction; management; facility, defined.

Cities of the second class and villages are hereby authorized and empowered to (1) accept a gift or devise of or to purchase a facility or a building suitable

for conversion into a facility, (2) purchase real estate and erect a building or buildings thereon for the purpose of establishing a facility, and (3) maintain, manage, improve, remodel, equip, and operate a facility.

For purposes of sections 17-961 to 17-966, facility shall mean a municipal hospital, a medical clinic, a nursing home, or multiunit housing.

Source: Laws 1945, c. 31, § 1, p. 149; Laws 1957, c. 36, § 1, p. 200; Laws 1965, c. 72, § 1, p. 293; Laws 1992, LB 1240, § 14.

17-962 Gift or devise; approval by city council or village board.

Before any gift or devise specified in section 17-961 may be accepted, the same shall be approved by the city council or village board.

Source: Laws 1945, c. 31, § 2, p. 149; Laws 1992, LB 1240, § 15.

17-963 Facility; acquisition or construction; issuance of bonds; interest; election.

(1) The mayor and council of such city or the chairperson and board of trustees of such village, as the case may be, adopting the proposition to accept such gift or devise, make such purchase, erect such building or buildings, or maintain, manage, improve, remodel, equip, and operate a facility shall have the power to borrow money and pledge the property and credit of the city or village upon its municipal bonds, or otherwise, for such purpose or purposes, except that no such bonds shall be issued until after the same have been authorized by a majority vote of the electors voting on the proposition of their issuance at a general municipal election or at a special election called for the submission of such proposition.

(2) The bonds shall be payable in not to exceed twenty years from date and shall bear interest payable annually or semiannually. Notice of the time and place of the election shall be given by publication three successive weeks prior thereto in some legal newspaper printed in and of general circulation in such city or village or, if no newspaper is printed in such city or village, in a newspaper of general circulation in such city or village.

(3) No election shall be called until a petition therefor, signed by at least ten percent of the legal voters of such city or village, has been presented to the council or to the board of trustees. The number of voters of the city or village voting for the office of Governor at the last general election prior to the presenting of such petition shall be deemed the number of voters in the city or village for the purpose of determining the sufficiency of such a petition. If such a bond issue in such a city or village is defeated, the proposition of issuing bonds for such a purpose shall not be resubmitted to the voters therein within a period of six months from and after the date of such election.

Source: Laws 1945, c. 31, § 3, p. 149; Laws 1947, c. 41, § 1, p. 156; Laws 1957, c. 36, § 2, p. 201; Laws 1965, c. 72, § 2, p. 293; Laws 1969, c. 51, § 59, p. 309; Laws 1971, LB 534, § 20; Laws 1992, LB 1240, § 16.

17-964 Facility; maintenance; tax.

The mayor and council of cities of the second class and the chairperson and board of trustees of villages, as the case may be, shall have the power to levy a tax each year of not to exceed seven cents on each one hundred dollars upon

the taxable value of all the taxable property in such cities or villages for the purpose of maintaining and operating a facility. They shall by ordinance determine and declare how the facility shall be managed.

Source: Laws 1945, c. 31, § 4, p. 150; Laws 1953, c. 287, § 26, p. 946; Laws 1957, c. 36, § 3, p. 202; Laws 1965, c. 72, § 3, p. 294; Laws 1979, LB 187, § 65; Laws 1992, LB 719A, § 65; Laws 1992, LB 1240, § 17.

17-965 Facility fund; established; custodian.

Whenever a city or village acquires a facility as provided in sections 17-961 to 17-966, there shall be established a facility fund of which the treasurer of such city or village shall be the custodian. All funds received by gift or devise or raised by taxation, as provided in such sections, shall be paid into such fund.

Source: Laws 1945, c. 31, § 5, p. 150; Laws 1957, c. 36, § 4, p. 202; Laws 1965, c. 72, § 4, p. 295; Laws 1992, LB 1240, § 18.

17-966 Facility board; members; duties; powers; warrants.

In each city or village where a facility as provided in sections 17-961 to 17-966 is established, the mayor and city council of such city, or the chairperson and board of trustees of such village, as the case may be, may provide by ordinance for the creation of a facility board which shall be composed of not less than three nor more than seven members. The members of the board shall (1) be residents of such city or village, (2) have charge of the facility, and (3) have the power to establish rules for the management, operation, and use of the same, as provided by such ordinance. When a facility board has been appointed and qualified, all accounts against the facility fund shall be audited by the facility board, warrants against such fund shall be drawn by the chairperson of such board, and warrants so drawn shall be paid by the city or village treasurer out of such fund.

Source: Laws 1945, c. 31, § 6, p. 150; Laws 1957, c. 36, § 5, p. 202; Laws 1965, c. 72, § 5, p. 295; Laws 1992, LB 1240, § 19; Laws 2003, LB 76, § 1.

(h) LIBRARIES

17-967 Bonds; city of the second class or village; municipal library; issuance; interest; conditions; limitations; tax levy.

Any city of the second class or village organized according to law is hereby authorized to issue bonds in aid of improving municipal libraries of cities of the second class and villages in an amount not exceeding seven-tenths of one percent of the taxable valuation of all the taxable property, as shown by the last assessment, within such city of the second class or village in the manner directed in this section:

(1) A petition signed by not less than fifty freeholders of the city of the second class or village shall be presented to the city council of cities of the second class or board of trustees of villages. Such petition shall set forth the nature of the work contemplated, the amount of bonds sought to be voted, the rate of interest, and the length of time such bonds run, which in no event shall be less than five years nor more than twenty years from the date thereof. The petition-

ers shall give bond to be approved by the city council of cities of the second class or board of trustees of villages for the payment of the expenses of the election in the event that the proposition fails to receive a majority of the votes cast at such election; and

(2) Upon the receipt of such petition, the city council of cities of the second class or board of trustees of villages shall give notice and call an election in the city of the second class or village. Such notice, call, and election shall be governed by the laws regulating an election for voting bonds for such city or village. When a proposition is submitted for the issuance of bonds for the acquisition of a site or the construction of a single building for the purpose of housing the municipal public library in cities of the second class or villages, it shall be required as a condition precedent to the issuance of such bonds that a majority of the votes cast shall be in favor of such proposition. Bonds in such a city shall not be issued for such purpose in the aggregate to exceed one and four-tenths percent of the taxable valuation of all the taxable property in such a city as shown by the last assessment within such city of the second class.

Source: Laws 1967, c. 33, § 3, p. 154; Laws 1969, c. 51, § 60, p. 310; Laws 1971, LB 534, § 21; Laws 1979, LB 187, § 66; Laws 1992, LB 719A, § 66.

17-968 Bonds; issuance; record.

If a majority of the votes cast at such election are in favor of the proposition, the city council of cities of the second class or board of trustees of villages shall, as the case may be, without delay, cause to be prepared and shall issue the bonds in accordance with the petition and notice of election. The bonds shall be signed by the mayor and city clerk of cities of the second class or chairperson of the board of trustees and village clerk of villages and shall be attested by the respective seals. The village clerk of villages or city clerk of cities of the second class, as the case may be, shall enter upon the records of the board or council, the petition, bond, notice and call for the election, canvass of the vote, the number, amount, and interest, and the date at which each bond issued shall become payable.

Source: Laws 1967, c. 33, § 4, p. 156; Laws 1971, LB 534, § 22; Laws 2001, LB 420, § 18.

17-969 Bonds; sinking fund; interest; levy.

The city councils of cities of the second class, or boards of trustees of villages or the person charged with levying the taxes, shall each year until the bonds issued under the authority of section 17-967 be paid, levy upon the taxable property in the city of the second class or village, a tax sufficient to pay the interest and five percent of the principal as a sinking fund; and at the tax levy preceding the maturity of any such bonds, levy an amount sufficient to pay the principal and interest due on such bonds.

Source: Laws 1967, c. 33, § 5, p. 156.

(i) WATER SERVICE DISTRICT

17-970 Water service districts; establishment; ordinance.

The governing body of any city of the second class or village shall have power, by ordinance, (1) to lay out the city or village into suitable districts for

the purpose of establishing a system of water service districts, (2) to provide such systems and regulate the construction, repair, and use of the same, (3) to compel all proper connections therewith and branches from other streets, avenues, and alleys, and from private property, and (4) to provide a penalty not to exceed one hundred dollars for any obstruction or injury to any water main or part thereof, or for failure to comply with the regulations prescribed therefor. No such improvements shall be ordered except as provided in sections 17-971 and 17-972.

Source: Laws 1967, c. 73, § 1, p. 237.

17-971 Water service districts; improvements; protest; effect.

Whenever the governing body deems it necessary or desirable to make improvements in a water service district, it shall by ordinance create such water service district and, after the passage, approval, and publication of such ordinance, shall publish notice of the creation of such district for two consecutive weeks in a legal newspaper of the city or village. If no legal newspaper is published in the city or village, the notice shall be placed in a legal newspaper of general circulation in the city or village. If a majority of the resident owners of the property directly abutting upon any water main to be constructed within such water service district shall file with the city clerk or the village clerk within twenty days after the first publication of such notice written objections to the creation of such district, such improvement shall not be made as provided in such ordinance, but such ordinance shall be repealed. If such objections are not so filed against the district, the governing body shall immediately cause such work to be done or such improvement to be made, shall contract therefor, and shall levy assessments on the lots and parcels of land within such district or districts specially benefited in proportion to such benefits in order to pay the cost of such improvement.

Source: Laws 1967, c. 73, § 2, p. 237; Laws 1986, LB 960, § 10.

17-972 Water service districts; failure to comply with regulation or make connection; effect.

If any property owner shall neglect or fail, for ten days after notice either by personal service or by publication in a legal newspaper in the manner prescribed in section 17-971, to comply with the regulations adopted pursuant to section 17-970 or to make any required connections, the governing body may cause the same to be done and assess the cost against the property and collect the same in the manner provided for other special taxes.

Source: Laws 1967, c. 73, § 3, p. 238; Laws 1986, LB 960, § 11.

17-973 Water service district; assessments; lien; date due; payable.

All assessments made under the provisions of sections 17-970 to 17-976 shall be a lien on the property against which levied from the date of levy and shall thereupon be certified by direction of the governing body to the treasurer of such city or village for collection. Except as provided in section 18-1216, such assessments shall be due and payable to such treasurer until November 1 thereafter or until the delivery of the tax list for such year to the treasurer of the county in which such city or village may be situated, at and after which time the same shall be due and payable to such county treasurer. The governing body of such city or village shall, within the time provided by law, cause such

assessments, or the portion thereof remaining unpaid, to be certified to the county clerk of the county for entry upon the proper tax lists. If the city or village treasurer collects any assessment or portion thereof so certified while the same shall be payable to the county treasurer, the city or village treasurer shall certify the assessment or portion thereof to the county treasurer at once, and the county treasurer shall correct the record to show such payment.

Source: Laws 1967, c. 73, § 4, p. 238; Laws 1996, LB 962, § 2.

17-974 Water service district; assessments; delinquent; interest; rate; payment.

Such assessments shall become delinquent in equal annual installments over such period of years, not to exceed ten, as the governing body may determine at the time of making the levy, the first such equal installment to become delinquent in fifty days after the date of such levy. Each of such installments, except the first, shall draw interest at a rate not exceeding the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, payable annually, from the time of the levy until the same shall become delinquent, and after the same becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon. All of such installments may be paid at one time on any lot or land within fifty days from the date of the levy without interest and, if so paid, such lot or land shall be exempt from any lien or charge therefor.

Source: Laws 1967, c. 73, § 5, p. 239; Laws 1980, LB 933, § 21; Laws 1981, LB 167, § 22.

17-975 Water service districts; cost of improvements; partial payments; final payment; contractor; interest.

For the purpose of making partial payments as the work progresses under the provisions of sections 17-970 to 17-976, warrants may be issued by the governing body upon certificates of the engineer in charge showing the amount of work completed and materials necessarily purchased and delivered for the orderly and proper continuation of the project in the total amount of not to exceed ninety-five percent of the cost thereof. Upon the completion and acceptance of the work a final warrant shall be issued for the balance of the amount due the contractor or other party entitled to payment. The governing body shall pay to the contractor interest at the rate of eight percent per annum on the amounts due on partial and final payments beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the governing body, and running until the date that the warrant is tendered to the contractor. Such warrants shall be payable in the order of their number and shall bear interest at not to exceed six percent per annum from the date of registration until paid.

Source: Laws 1967, c. 73, § 6, p. 239; Laws 1974, LB 636, § 5.

17-976 Water service districts; cost of improvements; bonds; interest; issuance; tax; levy.

For the purpose of paying the cost of improvements in any water service district and the funding of any warrants issued, the governing body may by ordinance cause to be issued bonds of the city or village to be called Water

Service District Bonds of District No. ..., payable in not to exceed ten years from date and to bear interest payable annually or semiannually. Such bonds shall be general obligations of the city or village, and the governing body thereof shall levy and collect annually a tax upon all of the taxable property in such city or village sufficient in rate and amount to pay in full, when taken together with the assessments provided for in section 17-971, the principal and interest of such bonds as the same become due. The amount of such tax shall not be included in the maximum amount of tax which any such city of the second class or village is authorized to levy annually.

Source: Laws 1967, c. 73, § 7, p. 239; Laws 1969, c. 51, § 61, p. 311; Laws 1992, LB 719A, § 67.

ARTICLE 10

SUBURBAN DEVELOPMENT

Section
17-1001. Suburban development; zoning ordinances; building regulations; public utility codes; extension.
17-1002. Designation of jurisdiction; suburban development; subdivision; platting; consent required; review by county planning commission; when required.
17-1003. Suburban development; powers of city council or board of trustees; dedication of avenues, streets, and alleys.
17-1004. Designation of jurisdiction; how described.

17-1001 Suburban development; zoning ordinances; building regulations; public utility codes; extension.

Except as provided in section 13-327, any city of the second class or village may apply by ordinance any existing or future zoning ordinances, property use regulation ordinances, building ordinances, electrical ordinances, and plumbing ordinances, to an area within one mile of the corporate limits of such municipalities, with the same force and effect as if such area were within their corporate limits. No such ordinance shall be extended or applied so as to prohibit, prevent, or interfere with the conduct of existing farming, livestock operations, businesses, or industry. For purposes of sections 70-1001 to 70-1020, the zoning area of a city of the second class or village shall be one-half mile from the corporate limits of such municipalities. The fact that the zoning area or part thereof is located in a different county or counties than some or all portions of the municipality shall not be construed as affecting the necessity of obtaining the approval of the city council or board of trustees of such municipality or its agent designated pursuant to section 19-916.

Source: Laws 1957, c. 37, § 1, p. 204; Laws 1967, c. 70, § 3, p. 232; Laws 1967, c. 75, § 4, p. 244; Laws 1983, LB 71, § 4; Laws 2002, LB 729, § 10.

Notwithstanding section 24-517, the district court has jurisdiction in injunctive actions to enforce zoning ordinances. Village of Springfield v. Hevelone, 195 Neb. 37, 236 N.W.2d 811 (1975).

Section empowers cities of the second class and villages to extend existing ordinances to the one-half mile area surrounding the municipal limits and authorize inclusion of this area in all future ordinances. City of Syracuse v. Farmers Elevator, Inc., 182 Neb. 783, 157 N.W.2d 394 (1968).

17-1002 Designation of jurisdiction; suburban development; subdivision; platting; consent required; review by county planning commission; when required.

(1) Except as provided in section 13-327, any city of the second class or village may designate by ordinance the portion of the territory located within

one mile of the corporate limits of such city or village and outside of any other organized city or village within which the designating city or village will exercise the powers and duties granted by this section and section 17-1003 or section 19-2402.

(2) No owner of any real property located within the area designated by a city or village pursuant to subsection (1) of this section may subdivide, plat, or lay out such real property in building lots, streets, or other portions of the same intended to be dedicated for public use or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto without first having obtained the approval of the city council or board of trustees of such municipality or its agent designated pursuant to section 19-916 and, when applicable, having complied with sections 39-1311 to 39-1311.05. The fact that such real property is located in a different county or counties than some or all portions of the municipality shall not be construed as affecting the necessity of obtaining the approval of the city council or board of trustees of such municipality or its designated agent.

(3) No plat of such real property shall be recorded or have any force or effect unless approved by the city council or board of trustees of such municipality or its designated agent.

(4) In counties that have adopted a comprehensive development plan which meets the requirements of section 23-114.02 and are enforcing subdivision regulations, the county planning commission shall be provided with all available materials on any proposed subdivision plat, contemplating public streets or improvements, which is filed with a municipality in that county, when such proposed plat lies partially or totally within the extraterritorial subdivision jurisdiction being exercised by that municipality in such county. The commission shall be given four weeks to officially comment on the appropriateness of the design and improvements proposed in the plat. The review period for the commission shall run concurrently with subdivision review activities of the municipality after the commission receives all available material for a proposed subdivision plat.

Source: Laws 1957, c. 37, § 2, p. 204; Laws 1967, c. 70, § 4, p. 233; Laws 1967, c. 75, § 5, p. 244; Laws 1978, LB 186, § 2; Laws 1983, LB 71, § 5; Laws 1993, LB 208, § 3; Laws 2001, LB 222, § 2; Laws 2002, LB 729, § 11; Laws 2003, LB 187, § 5.

17-1003 Suburban development; powers of city council or board of trustees; dedication of avenues, streets, and alleys.

The city council or board of trustees of such municipality shall have power, by ordinance, to provide the manner, plan, or method by which the real property in any such area may be subdivided, platted, or laid out, including a plan or system for the avenues, streets, or alleys to be laid out within or across the same. The city council or board of trustees shall have the power to compel the owner of any such real property in any such area, in subdividing, platting, or laying out of same, to conform to the requirements of such ordinance and to lay out and dedicate the avenues, streets, and alleys in accordance therewith.

Source: Laws 1957, c. 37, § 3, p. 204.

17-1004 Designation of jurisdiction; how described.

An ordinance of a city of the second class or village designating its jurisdiction over territory outside of the corporate limits of the city or village under section 17-1001 or 17-1002 shall describe such territory by metes and bounds or by reference to an official map.

Source: Laws 1993, LB 208, § 4.

CHAPTER 18
CITIES AND VILLAGES; LAWS APPLICABLE TO ALL

Article.

Cross References

Constitutional provision:
Governmental continuity in emergencies, see Article III, section 29, Constitution of Nebraska.
Excess or sinking funds, investment of, see section 77-2341.
Levy limitation, property tax, see section 77-3442.
Records Management Act, see section 84-1201 et seq.

ARTICLE 1
ORDINANCES

Cross References

Violations of ordinances may be prosecuted in county court, see section 25-2703.

Section

Section
18-108. Repealed. Laws 1982, LB 807, § 46.
18-109. Repealed. Laws 1982, LB 807, § 46.
18-110. Repealed. Laws 1982, LB 807, § 46.
18-111. Repealed. Laws 1982, LB 807, § 46.
18-112. Repealed. Laws 1982, LB 807, § 46.
18-113. Repealed. Laws 1982, LB 807, § 46.
18-114. Repealed. Laws 1982, LB 807, § 46.
18-115. Repealed. Laws 1982, LB 807, § 46.
18-116. Repealed. Laws 1982, LB 807, § 46.
18-117. Repealed. Laws 1982, LB 807, § 46.
18-118. Repealed. Laws 1982, LB 807, § 46.
18-119. Repealed. Laws 1982, LB 807, § 46.
18-120. Repealed. Laws 1982, LB 807, § 46.
18-121. Repealed. Laws 1982, LB 807, § 46.
18-122. Repealed. Laws 1982, LB 807, § 46.
18-123. Repealed. Laws 1982, LB 807, § 46.
18-124. Repealed. Laws 1982, LB 807, § 46.
18-125. Repealed. Laws 1982, LB 807, § 46.
18-126. Repealed. Laws 1982, LB 807, § 46.
18-127. Repealed. Laws 1982, LB 807, § 46.
18-128. Repealed. Laws 1982, LB 807, § 46.
18-129. Repealed. Laws 1974, LB 675, § 1.
18-130. Transferred to section 19-3701.
18-131. Publication.
18-132. Adoption of standard codes.

18-101 Repealed. Laws 1982, LB 807, § 46.

18-102 Repealed. Laws 1982, LB 807, § 46.

18-103 Repealed. Laws 1982, LB 807, § 46.

18-104 Repealed. Laws 1982, LB 807, § 46.

18-105 Repealed. Laws 1982, LB 807, § 46.

18-106 Repealed. Laws 1982, LB 807, § 46.

18-107 Repealed. Laws 1982, LB 807, § 46.

18-108 Repealed. Laws 1982, LB 807, § 46.

18-109 Repealed. Laws 1982, LB 807, § 46.

18-110 Repealed. Laws 1982, LB 807, § 46.

18-111 Repealed. Laws 1982, LB 807, § 46.

18-112 Repealed. Laws 1982, LB 807, § 46.

18-113 Repealed. Laws 1982, LB 807, § 46.

18-114 Repealed. Laws 1982, LB 807, § 46.

18-115 Repealed. Laws 1982, LB 807, § 46.

18-116 Repealed. Laws 1982, LB 807, § 46.

18-117 Repealed. Laws 1982, LB 807, § 46.

18-118 Repealed. Laws 1982, LB 807, § 46.

18-119 Repealed. Laws 1982, LB 807, § 46.

18-120 Repealed. Laws 1982, LB 807, § 46.

18-121 Repealed. Laws 1982, LB 807, § 46.

18-122 Repealed. Laws 1982, LB 807, § 46.

18-123 Repealed. Laws 1982, LB 807, § 46.

18-124 Repealed. Laws 1982, LB 807, § 46.

18-125 Repealed. Laws 1982, LB 807, § 46.

18-126 Repealed. Laws 1982, LB 807, § 46.

18-127 Repealed. Laws 1982, LB 807, § 46.

18-128 Repealed. Laws 1982, LB 807, § 46.

18-129 Repealed. Laws 1974, LB 675, § 1.

18-130 Transferred to section 19-3701.

18-131 Publication.

Ordinances passed by cities of all classes and villages must be posted, published in a legal newspaper, or published in book or pamphlet form, as required by their respective charters or general laws.

Source: Laws 1933, c. 111, § 1, p. 451; C.S.Supp.,1941, § 18-1501.

18-132 Adoption of standard codes.

The legislative bodies of all cities and villages may adopt by ordinance the conditions, provisions, limitations, and terms of a plumbing code, an electrical code, a fire prevention code, a building code, and any other standard code which contains rules and regulations printed as a code in book or pamphlet form, by reference to such code, or portions thereof, alone, without setting forth in the ordinance the conditions, provisions, limitations, and terms of such code. When any such code, or portion thereof, has been incorporated by reference into any ordinance, as provided in this section, it shall have the same force and effect as though it had been spread at large in such ordinance without further or additional posting or publication thereof. Not less than one copy of such standard code, or portion thereof, shall be filed for use and examination by the public in the office of the clerk of such city or village prior to the adoption thereof. The adoption of any such standard code by reference shall be construed to incorporate such amendments thereto as may be made in such standard code from time to time, if the copy of such standard code so filed is at all times kept current in the office of the clerk of such city or village. If there is no ordinance adopting a plumbing code in effect in a city or village, the American National Standards Institute Uniform Plumbing Code, ANSI A40-1993, shall serve as the plumbing code for all the area within the jurisdiction of the city or village. Nothing in this section shall be interpreted as creating

an obligation for the city or village to inspect plumbing work done within its jurisdiction to determine compliance with the plumbing code.

Source: Laws 1933, c. 111, § 1, p. 451; C.S.Supp.,1941, § 18-1501; R.S.1943, § 18-132; Laws 1984, LB 748, § 1; Laws 1996, LB 1304, § 1.

ARTICLE 2
POLICE COURTS

Section
18-201. Repealed. Laws 1972, LB 1032, § 287.
18-202. Repealed. Laws 1972, LB 1032, § 287.
18-203. Repealed. Laws 1972, LB 1032, § 287.
18-204. Repealed. Laws 1972, LB 1032, § 287.
18-205. Repealed. Laws 1972, LB 1032, § 287.
18-206. Repealed. Laws 1972, LB 1032, § 287.
18-207. Repealed. Laws 1972, LB 1032, § 287.
18-208. Repealed. Laws 1972, LB 1032, § 287.
18-209. Repealed. Laws 1972, LB 1032, § 287.
18-210. Repealed. Laws 1972, LB 1032, § 287.
18-211. Repealed. Laws 1972, LB 1032, § 287.
18-212. Repealed. Laws 1972, LB 1032, § 287.
18-213. Repealed. Laws 1972, LB 1032, § 287.
18-214. Repealed. Laws 1972, LB 1032, § 287.

18-201 Repealed. Laws 1972, LB 1032, § 287.

18-202 Repealed. Laws 1972, LB 1032, § 287.

18-203 Repealed. Laws 1972, LB 1032, § 287.

18-204 Repealed. Laws 1972, LB 1032, § 287.

18-205 Repealed. Laws 1972, LB 1032, § 287.

18-206 Repealed. Laws 1972, LB 1032, § 287.

18-207 Repealed. Laws 1972, LB 1032, § 287.

18-208 Repealed. Laws 1972, LB 1032, § 287.

18-209 Repealed. Laws 1972, LB 1032, § 287.

18-210 Repealed. Laws 1972, LB 1032, § 287.

18-211 Repealed. Laws 1972, LB 1032, § 287.

18-212 Repealed. Laws 1972, LB 1032, § 287.

18-213 Repealed. Laws 1972, LB 1032, § 287.

18-214 Repealed. Laws 1972, LB 1032, § 287.

ARTICLE 3
PUBLIC OFFICERS; PRIVATE GAIN

Cross References

Contracts, see sections 49-14,103.01 to 49-14,103.07.

Section

18-301 Repealed. Laws 1983, LB 370, § 28.

18-301.01 Repealed. Laws 1986, LB 548, § 15.

18-301.02 Repealed. Laws 1986, LB 548, § 15.

18-301.03 Repealed. Laws 1986, LB 548, § 15.

18-301.04 Repealed. Laws 1986, LB 548, § 15.

18-301.05 Repealed. Laws 1986, LB 548, § 15.

18-301.06 Repealed. Laws 1986, LB 548, § 15.

18-302 Repealed. Laws 1961, c. 53, § 6.

18-303 Repealed. Laws 1982, LB 347, § 13.

18-304 Repealed. Laws 1982, LB 347, § 13.

18-305 Telephones; free or underpriced service to city officers; acceptance by officer; prohibited; penalties.

It shall be unlawful for any telephone company to furnish to any officer of any city or village in this state, whether such officer be elective or appointive, a telephone free of charge, or for a price less than is charged other customers for similar service, or for any such officer to accept such telephone or telephone service free of charge, or at a less price than shall be charged to other customers for similar service. Any violation of this section by a telephone company shall be a Class III misdemeanor, and the officer or agent of any such telephone company acting or assisting in such violation shall be guilty of a Class III misdemeanor. Any violation of this section by any officer of any such city or village shall be a Class III misdemeanor; and he or she shall upon

conviction forfeit the office held by him or her at the time of committing such offense.

Source: Laws 1897, c. 13, § 3, p. 137; R.S.1913, § 5218; C.S.1922, § 4419; C.S.1929, § 18-403; R.S.1943, § 18-305; Laws 1982, LB 347, § 2.

18-306 Electric or other lights; free or underpriced service to city officers; prohibited; penalties.

It shall be unlawful for any person, partnership, limited liability company, or corporation engaged in furnishing in any city or village in this state artificial light, such as electric light, gas light, or light from oil, to furnish light to any officer, either elective or appointive, in any city or village in which such person, partnership, limited liability company, or corporation is engaged in furnishing such lights, free or for a less price than is charged other customers in such city or village for similar services. Any violation of this section shall be a Class III misdemeanor. Each day any service is furnished or accepted in violation of this section shall be considered as a separate offense and punished accordingly.

Source: Laws 1897, c. 13, § 4, p. 137; R.S.1913, § 5219; C.S.1922, § 4420; C.S.1929, § 18-404; R.S.1943, § 18-306; Laws 1982, LB 347, § 3; Laws 1993, LB 121, § 137.

18-307 Electric or other lights; free or underpriced service; acceptance by officer; prohibited; penalty.

If any officer, either elective or appointive in any city or village in this state, accepts free of charge or for a price less than is charged other customers for similar services in such city or village, any light or lights from any lighting company or services from any such lighting company or from any person, partnership, or limited liability company so engaged, such officer shall be guilty of a Class III misdemeanor and shall also forfeit the office held by him or her at the date of such offense.

Source: Laws 1897, c. 13, § 5, p. 138; R.S.1913, § 5220; C.S.1922, § 4421; C.S.1929, § 18-405; R.S.1943, § 18-307; Laws 1982, LB 347, § 4; Laws 1993, LB 121, § 138.

18-308 Water; free or underpriced service to city officers; acceptance by officer; prohibited; penalties.

Any water company engaged in furnishing water in any city or village in this state and any person, corporation, partnership, or limited liability company engaged in such services who furnishes to any officer, either elective or appointive, in such city or village, water free of charge or for a price less than is at the time charged for similar service to other customers in such city or village shall be guilty of a Class III misdemeanor. If any officer in any such city or village accepts free of charge or for a price less than is charged to other customers in such city or village any of the services mentioned in this section, such officer shall be guilty of a Class III misdemeanor and shall also forfeit the office held by him or her at the date of such violation. Each day such service or services are furnished or accepted in violation of this section shall constitute a separate and distinct offense and shall be punished accordingly.

Source: Laws 1897, c. 13, § 6, p. 138; R.S.1913, § 5221; C.S.1922, § 4422; C.S.1929, § 18-406; R.S.1943, § 18-308; Laws 1982, LB 347, § 5; Laws 1993, LB 121, § 139.

18-309 Prosecutions for violations; evidence; immunity of witnesses.

No person shall be excused from attending and testifying or producing books and papers, in any prosecution under sections 18-305 to 18-309, for the reason that the testimony, documentary or otherwise, required of him, may tend to incriminate him or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, in any prosecution under the provisions of said sections; *Provided,* no person so testifying shall be exempt from prosecution for perjury committed in so testifying.

Source: Laws 1897, c. 13, § 8, p. 139; R.S.1913, § 5223; C.S.1922, § 4424; C.S.1929, § 18-408.

18-310 Compensation contracts contingent upon outcome of municipal election; contrary to public policy.

It is hereby declared to be detrimental to good government and the best interests of the state to permit payment to any person, firm or corporation of fees or compensation in any form, other than regular salaries of duly elected or appointed officers of a city or village, for services rendered to a city or village contingent or dependent upon the outcome of any municipal election.

Source: Laws 1947, c. 49, § 1, p. 168.

18-311 Compensation contracts contingent upon outcome of municipal election; prohibited.

It shall be unlawful for the mayor and city council of any city, or the chairman and board of trustees of any village, to contract with, retain or employ any person, firm or corporation upon the basis that the amount of the fees or compensation to be paid shall be contingent or depend, in whole or in part, upon the outcome of any municipal election.

Source: Laws 1947, c. 49, § 2, p. 169.

18-312 Contingent compensation contracts; violations; penalty.

Any person, firm, or corporation that shall violate any of the provisions of sections 18-310 to 18-312 shall be guilty of a Class V misdemeanor.

Source: Laws 1947, c. 49, § 3, p. 169; Laws 1982, LB 347, § 6.

ARTICLE 4

PUBLIC UTILITIES

Cross References

Electric light and power systems, extension and sale, see Chapter 70, article 5.
Energy conservation loans, see sections 58-201 et seq. and 66-1001 et seq.

Section

Section
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18-416. Transferred to section 19-2702.
18-417. Transferred to section 70-1601.
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18-419. Sale or lease of dark fiber; authorized.

18-401 Public utility districts; creation authorized; extension or enlargement of service; limitation.

In all cities, villages, or metropolitan utilities districts owning or operating a waterworks system, sanitary sewerage system, storm sewer system, gas plant, or other public utility plant and in which water, gas, or other public utility is supplied by municipal authority for domestic, mechanical, public, or other purposes, or sewage and storm water disposal, or other services furnished, the authorities having general charge, supervision, and control of all matters pertaining to the water, gas, or other public utility supplied by any city, village, or metropolitan utilities district, or the furnishing of any public service such as sewage and storm water disposal, shall have the power and authority, whenever they deem it proper and necessary so to do, to create a water-main district, sanitary sewer district, storm water disposal district, or other public utility district, as the case may be, either within or without the corporate limits of the political subdivision involved, and to order and cause to be made extensions or enlargements of water mains, sanitary sewers, storm water disposal mains, gas mains, or other public utility service through such district, except that nothing contained in this section shall be construed as authorizing the creation of any

such public utility district outside of the corporate limits of a city of the primary class.

Source: Laws 1921, c. 110, § 1, p. 386; C.S.1922, § 4475; C.S.1929, § 18-1001; R.S.1943, § 18-401; Laws 1963, c. 79, § 1, p. 286; Laws 1992, LB 746, § 63.

Chapter 110, Laws 1921 (sections 18-401 to 18-411), is constitutional. Murphy v. Metropolitan Utilities Dist., 126 Neb. 663, 255 N.W. 20 (1934).

18-402 Public utility districts; how created.

Such water or gas main districts or other public utility service districts shall be created by ordinance, if the power be exercised, by city or village, or by resolution of the board of directors of the body having authority and control over the operation of said respective public utilities.

Source: Laws 1921, c. 110, § 2, p. 386; C.S.1922, § 4476; C.S.1929, § 18-1002.

18-403 Public utility districts; creation; extension or enlargement of service; notice requirements; protests.

Upon the passage of an ordinance or resolution, as the case may be, creating a water main district, gas main district, or other public utility service district or ordering the extension or enlargement of a water main, gas main, or other public utility service through such district, it shall be the duty of the city or village council which passed the ordinance or of the other public utility authority which passed such resolution creating such district to cause a notice to be published in the official paper of the city or village, as the case may be, or in the principal city within the metropolitan utilities district, addressed generally to the owners of the real estate within the water main, gas main, or other public utility district, notifying them of the creation of the district and of the ordering of the extension or enlargement of the water main, gas main, or other public utility service within such district and further notifying the owners of the real estate that they have thirty days from and after such publication to file with such city council or other public authority, as the case may be, their written protest against the creation of the district and of the extension or enlargement of the water main, gas main, or other public utility service so ordered.

Source: Laws 1921, c. 110, § 3, p. 386; C.S.1922, § 4477; C.S.1929, § 18-1003; R.S.1943, § 18-403; Laws 1992, LB 746, § 64.

In absence of notice giving owners of real estate thirty days to file written protest, city cannot levy special assessments for water main extension. Matzke v. City of Seward, 193 Neb. 211, 226 N.W.2d 340 (1975).

18-404 Public utility districts; creation; protest; effect.

If within the thirty days there is filed, as provided in section 18-403, a written protest signed by the record owners of a majority of the foot frontage of taxable property in such district, then the filing of such protest shall operate as a repeal or rescission of such ordinance or resolution, but if no such protest is filed within the thirty days, then the power of the council or other authority in the premises shall be deemed complete, and it shall be its duty to proceed to contract for and in behalf of such city, village, or metropolitan utilities district

for the extension or enlargement of the main or utility service so ordered or to make such extension or enlargement with its own forces.

Source: Laws 1921, c. 110, § 4, p. 387; C.S.1922, § 4478; C.S.1929, § 18-1004; R.S.1943, § 18-404; Laws 1959, c. 53, § 1, p. 244; Laws 1992, LB 746, § 65.

18-405 Public utility districts; extension or enlargement of service; cost; payment; assessment.

Upon the completion of an extension or enlargement of any water or gas main or other utility service in any such district, the actual cost thereof shall be duly certified to the council or directors of such city, village, or metropolitan utilities district when done by contract, but when done by utilizing the equipment and employees of any such city, village, or metropolitan utilities district, the average cost, based upon the average cost per foot to such city, village, or metropolitan utilities district in the previous calendar year, of installing water or gas distribution mains, as the case may be, shall be thus certified. Thereupon it shall be the duty of such council or directors to assess, to the extent of special benefits, the cost, not exceeding the actual cost or average cost, as the case may be, of installing such water main or gas main or other utility service, upon all real estate in the district, in proportion to the frontage of the real estate upon the main or utility service. The cost of any such extension or enlargement in excess of the actual or average cost of installing the water main or gas main or other utility service, as the case may be, heretofore authorized to be assessed and levied against the real estate in the district shall be paid out of the water fund or gas fund or other utility fund, as the case may be, of such city, village, or metropolitan utilities district, if there is such a fund, and if such city or village has no water fund or gas fund, then the same shall be paid out of the general fund. No real estate in any city, village, or metropolitan utilities district shall be subject to more than one special tax assessment for the same extension or enlargement of water or gas mains or other utility service.

Source: Laws 1921, c. 110, § 5, p. 387; C.S.1922, § 4479; C.S.1929, § 18-1005; Laws 1941, c. 27, § 1, p. 128; C.S.Supp.,1941, § 18-1005; R.S.1943, § 18-405; Laws 1959, c. 53, § 2, p. 245; Laws 1972, LB 1454, § 1; Laws 1992, LB 746, § 66.

A finding by the Board of Equalization that lands are specially benefited to full amount of assessment is tantamount to finding that such benefits are equal and uniform, warranting the adoption of foot front rule. Murphy v. Metropolitan Utilities District, 126 Neb. 663, 255 N.W. 20 (1934).

18-406 Public utility districts; assessments; when due; equalization; interest.

The special tax provided in section 18-405 shall be paid in ten installments. The first installment, or one-tenth of the tax, shall become due and delinquent fifty days after the date of levy, and one-tenth of such tax shall become due and delinquent each year thereafter, counting from the date of levy, for nine years. The special tax shall bear interest at a rate not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, prior to delinquency, and at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, after delinquency. Prior to the levy of the special tax as provided in section 18-405, such tax shall be equalized in the same manner as provided by law for the equalization of special assessments levied in such cities, such villages, and

the city of the metropolitan class within such metropolitan utilities district respectively.

Source: Laws 1921, c. 110, § 5, p. 388; C.S.1922, § 4479; C.S.1929, § 18-1005; Laws 1941, c. 27, § 1, p. 129; C.S.Supp.,1941, § 18-1005; R.S.1943, § 18-406; Laws 1963, c. 80, § 1, p. 287; Laws 1980, LB 933, § 22; Laws 1981, LB 167, § 23; Laws 1983, LB 438, § 1; Laws 1992, LB 746, § 67.

18-407 Public utility districts; creation by petition; denial.

If a petition is filed, signed by the owners of a majority of the front footage of real estate within the proposed water or gas main, or other utility service district, which petition shall contain the consent of the owners of the said real estate for the installation of gas or water mains of sizes designated by said council or directors and inserted in said petition, or of other utility service, then said water or gas main, or utility service district, shall be created; and the entire cost of laying said water or gas main, or utility service, shall be assessed and collected as provided in sections 18-405 to 18-410. The governing body shall have the discretion to deny the formation of the proposed district when the area to be improved has not previously been improved with a water system, sewer system, and grading of streets. If the governing body should deny a requested district formation, it shall state the grounds for such denial in a written letter to interested parties.

Source: Laws 1921, c. 110, § 5, p. 388; C.S.1922, § 4479; C.S.1929, § 18-1005; Laws 1941, c. 27, § 1, p. 129; C.S.Supp.,1941, § 18-1005; R.S.1943, § 18-407; Laws 1983, LB 125, § 3.

18-408 Public utility districts; warrants; issuance.

After the levy of such special tax and the extension of such tax upon the tax record against the real estate in such water or gas main or other utility service district, the city council or other authority having charge, supervision, and control of all matters pertaining to the water or gas supply or other utility service of such city, village, or metropolitan utilities district shall have the power to issue or cause to be issued against the fund so created special warrants payable out of the funds, which warrants shall be delivered to the contractor in payment of the money due him or her under his or her contract for the extension or enlargement of the water or gas main or other utility service, as the case may be, to cover the cost for which the special taxes were levied.

Source: Laws 1921, c. 110, § 6, p. 389; C.S.1922, § 4480; C.S.1929, § 18-1006; R.S.1943, § 18-408; Laws 1992, LB 746, § 68.

18-409 Public utility districts; extension or enlargement of service; provisions optional.

The city council or other authority in the city, village, or metropolitan utilities district in this state having general charge, supervision, and control of all matters pertaining to the water or gas supply or other utility service of such city, village, or metropolitan utilities district may by resolution elect and determine to proceed under the provisions of sections 18-401 to 18-411 in the matter of ordering and making and causing to be made extensions or enlarge-

ments of water or gas mains or other utilities service in such cities, villages, or metropolitan utilities districts but are not required to do so.

Source: Laws 1921, c. 110, § 7, p. 389; C.S.1922, § 4481; C.S.1929, § 18-1007; R.S.1943, § 18-409; Laws 1992, LB 746, § 69.

The district may extend water mains beyond city limits and enlarge district to include territory served by such extensions. Murphy v. Metropolitan Utilities Dist., 126 Neb. 663, 255 N.W. 20 (1934).

18-410 Metropolitan utilities districts; extension of service beyond corporate limits; procedure.

Any metropolitan utilities district is hereby given power to extend water mains, gas mains, and other utility service under its operation and management beyond the corporate limits of the city so as to include adjacent territory, sanitary and improvement districts, unincorporated areas, towns, or villages, even though in an adjoining county or counties, and may create such water main, gas main, and other utility service districts within such adjacent sanitary and improvement districts, unincorporated areas, cities, towns, and villages, even though located in an adjoining county or counties. When such water mains, gas mains, or other utility service districts are created in an adjoining county or counties, the special tax levy in such districts shall be certified to the county treasurer of such adjoining county or counties, as the case may be, and shall there be entered of record against the proper real estate so taxed. It shall be the duty of the county treasurer of the adjoining county or counties, as the case may be, to collect the taxes and as collected to report and transmit such taxes to the district.

Source: Laws 1921, c. 110, § 8, p. 389; C.S.1922, § 4482; C.S.1929, § 18-1008; R.S.1943, § 18-410; Laws 1992, LB 746, § 70; Laws 2001, LB 177, § 4.

Metropolitan Utilities District may extend its territory so as to include adjacent territory in another county. Barton v. City of Omaha, 180 Neb. 752, 145 N.W.2d 444 (1966).

The district may extend water mains beyond city limits and enlarge district to include territory served by such extensions. Murphy v. Metropolitan Utilities Dist., 126 Neb. 663, 255 N.W. 20 (1934).

18-411 Cities not in metropolitan class with home rule charters; powers not restricted.

Sections 18-401 to 18-410 shall not be construed as a restriction upon the powers of cities not in the metropolitan class which have adopted or may hereafter adopt a home rule charter under the state Constitution nor as a limitation upon any provision in such charter or any amendments thereof.

Source: Laws 1921, c. 110, § 9, p. 390; C.S.1922, § 4483; C.S.1929, § 18-1009.

18-412 Electric light and power systems; construction, acquisition, and maintenance; revenue bonds and debentures authorized; referendum petition; cities with home rule charters; powers.

Supplemental to any existing law on the subject, and in lieu of the issuance of general obligation bonds, or the levy of taxes upon property, as by law provided, any city or village within the State of Nebraska may construct, purchase, or otherwise acquire, maintain, extend, or enlarge, an electric light and power plant, distribution system, and transmission lines, and real and personal property needed or useful in connection therewith, and pay the cost

thereof by pledging and hypothecating the revenue and earnings of any electric light and power plant, distribution system, and transmission lines, owned or to be owned by such city or village. In the exercise of the authority granted in this section, any such city or village may issue and sell revenue bonds or debentures and enter into such contracts in connection therewith as may be proper and necessary. Such revenue bonds or debentures shall be a lien only upon the revenue and earnings of the electric light and power plant, distribution system, and transmission lines owned or to be owned by such city or village. No revenue bonds shall be issued until thirty days' notice of the proposition relating thereto shall have been given by the governing body by publication once each week for three successive weeks in some legal newspaper published and of general circulation in such city or village, or if no such newspaper is published therein, then by posting in five or more public places therein. If, within thirty days after the last publication of such notice or posting thereof, a referendum petition signed by qualified electors of such city or village equal in number to at least twenty percent of the vote cast at the last general municipal election held therein shall be filed with the municipal clerk, such bonds shall not be issued until the issuance thereof has been approved by a vote of the electors of such municipality at any general or special municipal election. If a majority of the voters voting on the issue vote against issuing such bonds, the bonds shall not be issued. If no such petitions are filed, the bonds shall be issued at the expiration of such thirty-day period. No publication of notice shall be required when revenue bonds are issued solely for the maintenance, extension or enlargement of any electric generating plant, distribution system or transmission lines owned by such city or village. The provisions of this section shall not restrict or limit the power or authority in the issuance of any such revenue bonds, as authorized by any home rule charter duly adopted by the electors or any city pursuant to the Constitution of the State of Nebraska.

Source: Laws 1935, c. 38, § 1, p. 153; C.S.Supp.,1941, § 18-1601; R.S. 1943, § 18-412; Laws 1963, c. 393, § 3, p. 1250.

Construction of entirely new power plant requires authorizing vote. Nacke v. City of Hebron, 155 Neb. 739, 53 N.W.2d 564 (1952).

Proposition for issuance of revenue bonds was sufficient if submitted in the language of this section. Inslee v. City of Bridgeport, 153 Neb. 559, 45 N.W.2d 590 (1951).

When municipality has an existing system, it can issue revenue bonds without vote of electors. Slepicka v. City of Wilber, 150 Neb. 376, 34 N.W.2d 646 (1948).

City was authorized to acquire electric light and power plant by issue and sale of revenue bonds if proposition was approved by a majority of electorate voting thereon. May v. City of Kearney, 145 Neb. 475, 17 N.W.2d 448 (1945).

Future city councils cannot be legally bound to a price fixed in advance by a formula depending on amount of bonds outstanding and allocation of earnings, when statute leaves the determination of the reasonableness of the price to be fixed by agreement or condemnation proceedings at time city determines to buy system. State ex rel. Consumers Public Power Dist. v. Boettcher, 138 Neb. 22, 291 N.W. 709 (1940).

Use of the symbol ''and/or'' upon the ballot prepared led to the confusion of the voters, who were absolutely unable to determine definitely what they were voting for or against. Drummond v. City of Columbus, 136 Neb. 87, 285 N.W. 109 (1939).

18-412.01 Electric system; contract to operate; bidding requirements.

Whenever any city or village in this state contracts with a public power district or an agency of the United States Government to operate, renew, replace, and add to the electric distribution, transmission, or generation system of the city or village and in the performance of the contract the public power district or the United States Government agrees to comply with the laws relating to bidding for contracts entered into by public power districts or the United States Government, the city or village shall not be required to advertise for or take bids for such renewals, replacements, or additions.

Source: Laws 1969, c. 78, § 3, p. 410; Laws 1998, LB 1129, § 1.

18-412.02 Electric system; acquisition from public power district or public power and irrigation district.

If requested to do so at any time hereafter by a city or village, any public power district or public power and irrigation district, formed after May 4, 1945, and providing electrical service at retail to a city of the metropolitan class, owning a distribution system in such city or village and also owning generating plants and transmission lines or both, shall inform the city or village of the minimum price at which the district is permitted to sell that portion of its distribution system within the corporate limits of such city or village to such city or village under the agreements of the district entered into with the holders of obligations issued by such district. For the purposes of this section the term obligations shall include all bonds, notes, and other evidences of indebtedness to the payment of which the revenue from that portion of the distribution system such city or village desires to acquire has been pledged. There shall be allowed as a credit upon such minimum price a sum that bears the same proportion thereto as the amount of such obligations that have been paid or redeemed and funded reserves established therefor by the district out of the net revenue from its operation while such city or village was within such district bears to the total amount of such obligations issued by the district since the date of its formation, excluding the amount of such obligations that have been refinanced and including the amount of the refinancing obligations. Such city or village shall reimburse the district for any costs necessarily paid by the district to independent engineers to obtain the minimum price under such agreements with the holders of the obligations of the district. At the request of the city or village, the district shall sell and convey that portion of the distribution system which is within its corporate limits to the city or village upon payment of such minimum price, and the city or village shall contract to continue to purchase all of its power and energy requirements from the district at least until such time as all obligations of the district outstanding on the date of such sale and conveyance shall have been fully paid and retired or reserves sufficient for the redemption thereof shall have been accumulated, but such transaction shall not be consummated nor become effective until thirty days' notice of the transaction shall have been given by the governing body by publication once each week for three successive weeks in some legal newspaper published and of general circulation in such city or village, or if no such newspaper is published therein, then by posting in five or more public places therein. If, within ninety days after the last publication of such notice or posting thereof, referendum petitions signed by qualified electors of such city or village equal in number to at least twenty percent of the vote cast at the last general municipal election held therein shall be filed with the municipal clerk, such transaction shall not become effective until it has been approved by a vote of the electors of such municipality at any general or special municipal election. If a majority of the voters voting on the issue vote against such transaction, the transaction shall not become effective. If no such petitions are filed, the transaction shall become effective at the expiration of such ninety-day period. The power district shall charge fair, reasonable, and nondiscriminatory rates so adjusted as, in a fair and equitable manner, to confer upon and distribute among its customers the benefits of a successful and efficient operation and conduct of the business of the district.

Source: Laws 1971, LB 195, § 1.

18-412.03 Repealed. Laws 1976, LB 1005, § 7.

18-412.04 Repealed. Laws 1976, LB 1005, § 7.

18-412.05 Repealed. Laws 1976, LB 1005, § 7.

18-412.06 Electric service; contracts to purchase authorized; limitation on liability.

(1) Any city or village owning or operating electric generation or transmission facilities may enter into contracts for the purchase of electric energy, power and energy, or capacity, or any combination thereof, upon such terms and conditions and for such periods as the governing body of such city or village may by ordinance authorize. Such terms and conditions may obligate the city or village to make payment under the contracts during such time or times as the facility, if any, to which the contract pertains may be incapable of being operated or may not be in operation for any reason. Any contract authorized by this section may be entered into by the city or village with nonprofit corporations of this or any other state among whose purposes is the financing of electric properties, projects or undertakings for such city or village, other municipalities of this or any other state, public power districts and public power and irrigation districts of this or any other state, other governmental entities or agencies of this or any other state or the federal government, electric cooperatives or electric membership cooperatives of this or any other state, or investor-owned electric utilities organized under the laws of any other state. The obligation and liability of such city or village under the contract shall be limited to the electric revenue of such city or village, unless prior to the execution of the contract by the city or village the contract shall have been approved by a majority of the qualified voters of the city or village voting upon the question.

(2) Any city or village may enter into contracts for the purchase of electric power to be generated by a project as provided in sections 70-1701 to 70-1705.

Source: Laws 1975, LB 60, § 1; Laws 2004, LB 969, § 6.

18-412.07 Electric facilities; joint exercise of powers with public power districts and public agencies; authority.

It is hereby declared to be in the public interest of the State of Nebraska that cities and villages of this state be empowered to participate jointly or in cooperation with public power districts and public power and irrigation districts and other public agencies in the establishment and operation of facilities for the generation or transmission of electric power and energy located within or outside this state in order to achieve economies and efficiencies in meeting the future electric energy needs of the people of the State of Nebraska. In furtherance of such need and in addition to but not in substitution for any other powers granted cities and villages of this state, each city and village which owns or operates electrical facilities shall have and may exercise its power and authority to plan, finance, acquire, construct, own, operate, maintain, improve, and decommission electric generation or transmission facilities located within or outside this state jointly and in cooperation with one or more such districts, other cities or villages of this state which own or operate electrical facilities, municipal corporations, or other governmental entities of other states which operate electrical facilities. The powers granted under this section may be

exercised with respect to any electric generation or transmission facility jointly with the powers granted under any other provision of sections 18-412.07 to 18-412.09 and 70-628.02 to 70-628.04.

Source: Laws 1976, LB 1005, § 1; Laws 1997, LB 658, § 1; Laws 2004, LB 969, § 7.

18-412.08 Electric facilities; joint exercise of powers with electric cooperatives or corporations; authority.

It is hereby declared to be in the public interest of the State of Nebraska that cities and villages of this state be empowered to participate jointly and in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state in the establishment and operation of facilities for the generation or transmission of electric power and energy in order to achieve economies and efficiencies in meeting the future electric energy needs of the people of the State of Nebraska. In furtherance of such end and in addition to, but not in substitution for, any other powers granted such cities and villages of this state, each city or village which owns or operates electrical facilities shall have and may exercise power and authority to plan, finance, acquire, construct, own, operate, maintain, improve, and decommission electric generation or transmission facilities located in this state jointly and in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state, and each city or village shall have and may exercise such power and authority with respect to electric generation or transmission facilities located outside this state jointly or in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state. The powers granted under this section may be exercised with respect to any electric generation or transmission facility jointly with the powers granted under any other provisions of sections 18-412.07 to 18-412.09 and 70-628.02 to 70-628.04.

Source: Laws 1976, LB 1005, § 2; Laws 1997, LB 658, § 2; Laws 2004, LB 969, § 8.

18-412.09 Electric facilities; joint exercise of power; agreement; terms and conditions; agent; powers and duties; liability of city or village.

Any city or village participating jointly and in cooperation with others in an electric generation or transmission facility may own an undivided interest in such facility and be entitled to the share of the output or capacity therefrom attributable to such undivided interest. Such city or village may enter into an agreement or agreements with respect to each such electric generation or transmission facility with the other participants therein, and any such agreement shall contain such terms, conditions, and provisions consistent with the provisions of sections 18-412.07 to 18-412.10 as the governing body of such city or village shall deem to be in the interests of such city or village. The agreement may include, but not be limited to, provision for the construction, operation, maintenance, and decommissioning of such electric generation or transmission facility by any one of the participants, which shall be designated in or pursuant to such agreement as agent, on behalf of itself and the other participants or by such other means as may be determined by the participants and provision for a uniform method of determining and allocating among participants costs of

construction, operation, maintenance, renewals, replacements, decommissioning, and improvements with respect to such facility. In carrying out its functions and activities as such agent with respect to construction, operation, maintenance, and decommissioning of such a facility, including without limitation the letting of contracts therefor, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participants. Notwithstanding the provisions of any other law to the contrary, pursuant to the terms of any such agreement in which or pursuant to which a public power district or a public power and irrigation district or a city or village of this state shall be designated as the agent thereunder for the construction, operation, maintenance, and decommissioning of such a facility, each of the participants may delegate its powers and duties with respect to the construction, operation, maintenance, and decommissioning of such facility to such agent, and all actions taken by such agent in accordance with the provisions of such agreement shall be binding upon each of such participants without further action or approval by their respective boards of directors or governing bodies. Such agent shall be required to exercise all such powers and perform its duties and functions under such agreement in a manner consistent with prudent utility practice. As used in this section, prudent utility practice shall mean any of the practices, methods, and acts at a particular time which, in the exercise of reasonable judgment in the light of the facts, including, but not limited to, the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. Unless specifically contracted otherwise by written agreement, no city or village shall become liable for and pay for any costs, expenses, or liabilities attributable to the undivided interest of any other participant in such electric generation or transmission facility, and unless specifically contracted otherwise by written agreement, no funds of such city or village may be used for any such purpose.

Source: Laws 1976, LB 1005, § 3; Laws 2004, LB 969, § 9.

18-412.10 Electric facilities outside state; joint acquisition and maintenance; conditions.

If a city or village proposes to, and during such time as the city and village shall, plan, finance, acquire, construct, own, operate, maintain, improve, and decommission jointly and in cooperation with others as contemplated by sections 18-412.07 to 18-412.10 facilities for the generation or transmission of electric power and energy located or to be located outside this state, such city or village may comply with all laws of the United States and of the state in which the facilities are or are to be located applicable to such facilities or applicable to any of the foregoing activities or applicable to the performance of any of such activities across state boundaries or in such state, including, without limiting the generality of the foregoing, submitting itself to any governmental body, board, commission, or agency having jurisdiction over such facilities or over any of such activities or over the performance of such activities and applying for and carrying out of all licenses, certificates, or other approvals required by such laws in order to enable the city or village to carry out the provisions of sections 18-412.07 to 18-412.10.

Source: Laws 1976, LB 1005, § 4; Laws 2004, LB 969, § 10.

18-413 Waterworks; right-of-way outside corporate limits; purposes; conditions.

Any city or village in this state erecting, constructing or maintaining a system of waterworks, or part of a system of waterworks, without its corporate limits, is hereby granted the right-of-way along any of the public roads of the state, the streets and alleys of any village or city within the state, and over and through any of the lands which are the property of the state, for the laying, constructing, and maintaining of water mains, conduits, and aqueducts for the purpose of transporting or conveying water from such system of waterworks, or part of such system of waterworks, to such city or village erecting the same. Such city or village is hereby granted such right-of-way for the further purpose of erecting and maintaining all necessary poles and wires, or conduits, for the purpose of transporting, transmitting or conveying electric current from such city or village to such system of waterworks, or part of such system of waterworks, for power and light purposes; *Provided, however,* that such city in constructing such water mains, conduits, and aqueducts for transporting water, and such poles, wires, and conduits for transmitting electric current along the streets or alleys of any other village, as aforesaid, shall construct and locate the same in accordance with existing ordinances of such other village or city pertaining thereto, and shall be liable for any damage caused thereby; *provided further,* that poles and wires shall be constructed so as not to interfere with the use of the public roadway, and said wires shall be placed at a height not less than twenty feet above all road crossings.

Source: Laws 1931, c. 35, § 1, p. 127; C.S.Supp.,1941, § 18-1301.

18-414 Repealed. Laws 1987, LB 663, § 28.

18-415 Repealed. Laws 1987, LB 663, § 28.

18-416 Transferred to section 19-2702.

18-417 Transferred to section 70-1601.

18-418 Electric service; negotiated rates; requirements.

In order to help stimulate economic development, any municipality furnishing electric service may, but shall not be required to, negotiate, fix, establish, and collect rates, tolls, rents, and other charges different from those of other users and consumers for electrical energy and associated services or facilities. The different rates, tolls, rents, and other charges would be effective for a period not to exceed five years, for services, commodities, and facilities sold, furnished, or supplied to or for the benefit of any project approved pursuant to the Quality Jobs Act beginning operation on or after July 1, 1995, that has new or additional energy consumption with a minimum electrical demand of five thousand kilowatts during the applicable billing demand period with a minimum annual load factor of fifty-five percent. In no case shall such charges be less than the cost of supplying such services.

Source: Laws 1995, LB 828, § 1.

Cross References

Quality Jobs Act, see section 77-4901.

18-419 Sale or lease of dark fiber; authorized.

In addition to the powers authorized by sections 18-401 to 18-418 and any ordinances or resolutions relating to the provision of electric service, any city or village owning or operating electric generation or transmission facilities may sell or lease its dark fiber pursuant to sections 86-574 to 86-578.

Source: Laws 2001, LB 827, § 8; Laws 2002, LB 1105, § 419.

ARTICLE 5
SEWER SYSTEMS

Section

18-501 Construction and operation; powers; tax levies.

(1) Any city or village in this state is hereby authorized to own, construct, equip, and operate, either within or without the corporate limits of such municipality, a sewerage system, including any storm sewer system or combination storm and sanitary sewer system, and plant or plants for the treatment, purification, and disposal in a sanitary manner of the liquid and solid wastes, sewage, and night soil of such municipality or to extend or improve any existing storm or sanitary sewer system or combination storm and sanitary sewer system.

(2) Any city or village shall have authority to acquire by gift, grant, purchase, or condemnation necessary lands therefor, either within or without the corporate limits of such municipality.

(3) For the purpose of owning, operating, constructing, maintaining, and equipping such sewage disposal plant and sewerage system, including any storm sewer system or combination storm and sanitary sewer system, referred to in subsections (1), (2), and (4) of this section, or improving or extending such existing system, any city or village is authorized and empowered to make a special levy of not to exceed three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property within any such municipality. The proceeds of the tax may be used for any of the purposes enumerated in this section and for no other purpose.

(4) In the event the present or proposed sewage disposal system of any city or village does not comply with the provisions of any other law relating to sewer systems, sewage disposal, or water pollution, such city or village shall levy each year a tax of seven cents on each one hundred dollars of taxable valuation for such purpose until sufficient funds are available for the financing of a system in compliance with law. In the event any city or village is otherwise raising funds

for such purpose, equivalent to such a levy, it shall not be required, in addition thereto, to make such levy.

Source: Laws 1933, c. 146, § 1, p. 561; Laws 1937, c. 41, § 1, p. 180; Laws 1941, c. 28, § 1, p. 130; C.S.Supp.,1941, § 18-1401; R.S. 1943, § 18-501; Laws 1951, c. 19, § 1, p. 99; Laws 1953, c. 287, § 27, p. 946; Laws 1955, c. 48, § 1, p. 166; Laws 1957, c. 39, § 3, p. 212; Laws 1979, LB 187, § 67; Laws 1992, LB 719A, § 68; Laws 1996, LB 1114, § 32.

Issuance of bonds for constructing storm sewers was matter of statewide concern. State law controlled over home rule charter. State ex rel. City of Grand Island v. Johnson, 175 Neb. 498, 122 N.W.2d 240 (1963).

Prior to 1951, obligations incurred under this and succeeding seven sections did not impose personal liability upon municipality but were payable only out of revenue. Michelson v. City of Grand Island, 154 Neb. 654, 48 N.W.2d 769 (1951).

Chapter 146, Laws 1933 (sections 18-501 to 18-508), is an independent act and not amendatory of previously existing laws, and is constitutional. State ex rel. City of Columbus v. Price, 127 Neb. 132, 254 N.W. 889 (1934).

18-502 Revenue bonds; issuance; interest; not included in limit on bonds.

For the purpose of owning, operating, constructing, and equipping such sewage disposal plant or sewerage system or improving or extending such existing system, a municipality may issue revenue bonds therefor. Such revenue bonds, as provided in this section, shall not impose any general liability upon the municipality but shall be secured only by the revenue as hereinafter provided of such utility. Such revenue bonds shall be sold for not less than par and bear interest at a rate set by the city council. The amount of such revenue bonds, either issued or outstanding, shall not be included in computing the maximum amount of bonds which the said municipality may be authorized to issue under its charter or any statute of this state.

Source: Laws 1933, c. 146, § 2, p. 561; Laws 1937, c. 41, § 2, p. 180; C.S.Supp.,1941, § 18-1402; R.S.1943, § 18-502; Laws 1957, c. 40, § 1, p. 214; Laws 1969, c. 51, § 62, p. 311.

18-503 Rules and regulations; charges; collection.

The governing body of such municipality may make all necessary rules and regulations governing the use, operation, and control thereof. The governing body may establish just and equitable rates or charges to be paid to it for the use of such disposal plant and sewerage system by each person, firm or corporation whose premises are served thereby. If the service charge so established is not paid when due, such sum may be recovered by the municipality in a civil action, or it may be certified to the tax assessor and assessed against the premises served, and collected or returned in the same manner as other municipal taxes are certified, assessed, collected and returned.

Source: Laws 1933, c. 146, § 3, p. 562; C.S.Supp.,1941, § 18-1403; R.S.1943, § 18-503; Laws 1961, c. 53, § 4, p. 199.

Sewer use charge is not a special assessment; a city has authority to make necessary rules and regulations including a reasonable processing charge on delinquent accounts. Rutherford v. City of Omaha, 183 Neb. 398, 160 N.W.2d 223 (1968).

Provision for sewer rental or use charges did not conflict with similar charges authorized for cities of the metropolitan class. Metropolitan Utilities Dist. v. City of Omaha, 171 Neb. 609, 107 N.W.2d 397 (1961).

Ordinance authorizing water supply to be shut off for nonpayment of delinquent sewer charges is not in conflict with this section. Michelson v. City of Grand Island, 154 Neb. 654, 48 N.W.2d 769 (1951).

18-504 Revenue bonds; payment; sinking fund; rates; rights of holders of bonds.

(1) Revenue bonds which are issued, as provided in section 18-502, shall not be a general obligation of the municipality, but shall be paid only out of the revenue received from the service charges as provided in section 18-503.

(2) If a service rate is charged, as a part of the revenue, as provided in subsection (1) of this section, to be paid as herein provided, such portion thereof as may be deemed sufficient shall be set aside as a sinking fund for the payment of the interest on said bonds, and the principal thereof at maturity.

(3) It shall be the duty of the governing body of the municipality to charge rates for the service of the sewerage system, as referred to in subsection (1) of this section, which shall be sufficient, at all times, to pay the cost of operation and maintenance thereof and to pay the principal of and interest upon all revenue bonds issued, under the provisions of section 18-502, and to carry out any covenants that may be provided in the ordinance authorizing the issuance of any such bonds.

(4) The holders of any of the revenue bonds or any of the coupons of any revenue bonds, issued under subsection (1) of this section, in any civil action, mandamus, or other proceeding may enforce and compel the performance of all duties required by this section and the covenants made by the municipality in the ordinance providing for the issuance of such bonds, including the making and collecting of sufficient rates or charges for the specified purposes and for the proper application of the income therefrom.

Source: Laws 1933, c. 146, § 4, p. 562; C.S.Supp.,1941, § 18-1404; R.S.1943, § 18-504; Laws 1957, c. 40, § 2, p. 214.

18-505 Franchises; contracts authorized; rates.

For the purpose of providing for such sewage disposal plant and sewerage system, or improving or extending such existing system, any such municipality may also enter into a contract with any corporation organized under or authorized by the laws of this state to engage in the business herein mentioned, to receive and treat in the manner hereinbefore mentioned, the sewage and night soil thereof, and to construct, and provide the facilities and services as hereinbefore described. Such contract may also authorize the corporation to charge the owners of the premises served such a service rate therefor as the governing body of such municipality may determine to be just and reasonable, or the municipality may contract to pay the said corporation a flat rate for such service, and pay therefor out of its general fund or the proceeds of any tax levy applicable to the purposes of such contract, or assess the owners of the property served a reasonable charge therefor to be collected as hereinbefore provided and paid into a fund to be used to defray such contract charges.

Source: Laws 1933, c. 146, § 5, p. 562; Laws 1937, c. 41, § 3, p. 181; C.S.Supp.,1941, § 18-1405.

18-506 General obligation bonds; issuance; interest; not included in limit on bonds.

For the purpose of owning, operating, constructing, and equipping any sewage disposal plant and any sanitary or storm sewer system or combination storm and sanitary sewer system, or improving or extending such existing system, or for the purpose stated in sections 18-501 to 18-505, any such municipality is also authorized and empowered to issue and sell the general obligation bonds of such municipality upon compliance with the provisions of section 18-506.01. Such bonds shall not be sold or exchanged for less than the par value thereof and shall bear interest which shall be payable annually or semiannually. The governing body of any such municipality shall have the

power to determine the denominations of such bonds, and the date, time, and manner of the payment thereof. The amount of such general obligation bonds, either issued or outstanding, shall not be included in the maximum amount of bonds which any such municipality may be authorized to issue and sell under its charter or any statutes of this state.

Source: Laws 1933, c. 146, § 6, p. 563; Laws 1937, c. 41, § 4, p. 182; C.S.Supp.,1941, § 18-1406; R.S.1943, § 18-506; Laws 1951, c. 19, § 2, p. 99; Laws 1955, c. 48, § 2, p. 167; Laws 1969, c. 51, § 63, p. 312.

18-506.01 Revenue bonds; general obligation bonds; issuance; conditions.

Revenue bonds, authorized by section 18-502, may be issued by ordinance duly passed by the mayor and city council of any city or the board of trustees of any village without any other authority. General obligation bonds, authorized by section 18-506, may be issued only after the question of their issuance shall have been submitted to the electors of the city or village at a general or special election, of which three weeks' notice thereof has been published in a legal newspaper published in or of general circulation in such city or village, and more than a majority of the electors voting at the election have voted in favor of the issuance of the bonds.

Source: Laws 1951, c. 19, § 3, p. 100; Laws 1967, c. 83, § 1, p. 259.

Sewer bonds can be issued only after more than sixty percent of the electors voting at the election vote in favor of issuance of bonds. State ex rel. City of Grand Island v. Johnson, 175 Neb. 498, 122 N.W.2d 240 (1963).

18-507 Installation, improvement, or extension; plans and specifications; bidding requirements.

Whenever the governing body of any city or village shall have ordered the installation of a sewerage system and sewage disposal plant or the improvement or extension of an existing system, the fact that such order was issued shall be recited in the official minutes of the governing body. The said body shall thereupon require that plans and specifications be prepared of such sewerage system and sewage disposal plant, or such improvement or extension. Upon approval of such plans, the governing body shall thereupon advertise for sealed bids for the construction of said improvements once a week for three weeks in a legal paper published in or of general circulation within said municipality, and the contract shall be awarded to the lowest responsible bidder.

Source: Laws 1933, c. 146, § 7, p. 563; C.S.Supp.,1941, § 18-1407.

A public body has discretion to award the contract to one other than the lowest of the responsible bidders whenever a submitted bid contains a relevant advantage. Rath v. City of Sutton, 267 Neb. 265, 673 N.W.2d 869 (2004).

By mandating that contracts be awarded to the lowest responsible bidder, the Nebraska Legislature is seeking to protect taxpayers, prevent favoritism and fraud, and increase competition in the bidding process by placing bidders on equal footing. Rath v. City of Sutton, 267 Neb. 265, 673 N.W.2d 869 (2004).

Determining the lowest responsible bidder is a two-step process. The first step is for the public body to determine which bidders are responsible to perform the contract. The second step focuses on which of the responsible bidders has submitted the lowest bid. Rath v. City of Sutton, 267 Neb. 265, 673 N.W.2d 869 (2004).

Determining the responsibility of bidders is a job for elected officials, and a court's only role is to review those decisions to make sure the public officials did not act arbitrarily, or from favoritism, ill will, or fraud. Rath v. City of Sutton, 267 Neb. 265, 673 N.W.2d 869 (2004).

In addition to a bidder's pecuniary ability, responsibility pertains to a bidder's ability and capacity to carry on the work, the bidder's equipment and facilities, the bidder's promptness, the quality of work previously done by him or her, the bidder's suitability to the particular task, and such other qualities as are found necessary to consider in order to determine whether or not, if awarded the contract, he or she could perform it strictly in accordance with its terms. Rath v. City of Sutton, 267 Neb. 265, 673 N.W.2d 869 (2004).

Public bodies do not act ministerially only, but exercise an official discretion when passing upon the question of the respon-

sibility of bidders. Rath v. City of Sutton, 267 Neb. 265, 673 N.W.2d 869 (2004).

When responsible bidders submit identical bids, the public body must award the contract to the lowest of the responsible bidders. Rath v. City of Sutton, 267 Neb. 265, 673 N.W.2d 869 (2004).

City council may, in specifications for municipal sewage treatment plant, permit bidders to propose and fix time for completion of proposed works, and may reserve right to omit any or all of separate items from contract for which separate price proposals are asked after bids are opened and before contract awarded, without rendering bidding unlawful. Best v. City of Omaha, 138 Neb. 325, 293 N.W. 116 (1940).

18-508 Service beyond corporate limits; conditions; contracts with users.

The owner of any sewerage system or sewage disposal plant, provided for in sections 18-501 to 18-507, or the municipality, is hereby authorized to extend the same beyond the limits of the city or village which it serves, under the same conditions as nearly as may be as within such corporate limits and to charge to users of its services reasonable and fair rates consistent with those charged or which might be charged within such corporate limits and consistent with the expense of extending and maintaining the same for the users thereof outside such corporate limits at a fair return to the owner thereof. The mayor and city council of any city or the board of trustees of any village shall have authority to enter into contracts with users of such sewerage system; *Provided,* no contract shall call for furnishing of such service for a period in excess of twenty years.

Source: Laws 1937, c. 41, § 5, p. 182; C.S.Supp.,1941, § 18-1409; R.S. 1943, § 18-508; Laws 1951, c. 19, § 4, p. 100; Laws 1957, c. 41, § 1, p. 217.

18-509 Rental and use charges; collection; use.

(1) The mayor and city council of any city or the board of trustees of any village, in addition to other sources of revenue available to the city or village, may by ordinance set up a rental or use charge, to be collected from users of any system of sewerage, and provide methods for collection thereof. The charges shall be charged to each property served by the sewerage system, shall be a lien upon the property served, and may be collected either from the owner or the person, firm, or corporation requesting the service.

(2) All money raised from the charges, referred to in subsection (1) of this section, shall be used for maintenance or operation of the existing system, for payment of principal and interest on bonds issued as is provided for in section 17-925, 18-502, 18-506, or 19-1305, or to create a reserve fund for the purpose of future maintenance or construction of a new sewer system for the city or village. Any funds raised from this charge shall be placed in a separate fund and not be used for any other purpose or diverted to any other fund.

Source: Laws 1951, c. 19, § 5, p. 101; Laws 1957, c. 40, § 3, p. 215; Laws 1971, LB 883, § 1.

Provision for sewer rental or use charges did not conflict with similar charges authorized for cities of the metropolitan class. Metropolitan Utilities Dist. v. City of Omaha, 171 Neb. 609, 107 N.W.2d 397 (1961).

18-510 Terms, defined; applicability of sections.

The terms sewage system, sewerage system, and disposal plant or plants as used herein are defined to mean and include any system or works above or below ground which has for its purpose any or all of the following: The removal, discharge, conduction, carrying, treatment, purification, or disposal of the liquid and solid waste and night soil of a municipality. It is intended that sections 18-501 to 18-512 may be employed in connection with sewage projects which do not include the erection or enlargement of a sewage disposal plant.

Source: Laws 1951, c. 19, § 6, p. 101; Laws 1995, LB 589, § 2.

18-511 Sections, how construed.

The provisions of Chapter 18, article 5, shall be independent of and in addition to any other provisions of the laws of the State of Nebraska with reference to sewage disposal plants and sewerage systems in cities and villages. The provisions of this article shall not be considered amendatory of or limited by any other provision of the laws of the State of Nebraska.

Source: Laws 1951, c. 19, § 7, p. 101; Laws 1969, c. 51, § 64, p. 312.

18-512 Anti-pollution-of-water measures; special levy.

For the purpose of creating a fund out of which anti-pollution-of-water measures may be financed, any city or village in this state is hereby authorized and empowered to make a special levy of not exceeding three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property within any such municipality, the proceeds thereof to be used for such purpose.

Source: Laws 1955, c. 49, § 1, p. 168; Laws 1961, c. 37, § 3, p. 164; Laws 1979, LB 187, § 68; Laws 1992, LB 719A, § 69; Laws 1996, LB 1114, § 33.

ARTICLE 6

SUBWAYS AND VIADUCTS

Section

Section
18-633. Construction; cost; deposit; mandamus.
18-634. Construction; contract; letting.
18-635. Railroad company; obligations; sections; effect.
18-636. Sections, how construed.

18-601 Construction; federal aid; plans; assumption of liability; condemnation procedure.

Any city or village shall have power by ordinance to avail itself of federal funds for the construction within the city or village limits of subways, viaducts, and approaches thereto, over or under railroad tracks, and may authorize agreements with the Department of Roads to construct such viaducts or subways, which shall be paid for out of funds furnished by the federal government. The ordinance shall approve detailed plans and specifications for such construction, including a map showing the exact location that such viaduct or subway is to occupy, which shall then and thereafter be kept on file with the city or village clerk and be open to public inspection. The ordinance shall make provision for the assumption of liability and payment of consequential damages to property owners resulting from such proposed construction and payment of damages for property taken therefor. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1935, Spec. Sess., c. 34, § 1, p. 196; C.S.Supp.,1941, § 18-901; R.S.1943, § 18-601; Laws 1947, c. 47, § 1, p. 166; Laws 1951, c. 101, § 61, p. 475.

18-602 Grade crossing projects; effect on railroads.

Grade crossing projects shall be undertaken on a basis that will impose no involuntary contributions on the affected railroads except as provided by section 5(b) of Public Law 521 enacted by the 78th Congress of the United States, and any amendments thereof, and shall not interfere with the use of present railroad tracks without the consent of such railroads.

Source: Laws 1935, Spec. Sess., c. 34, § 2, p. 197; C.S.Supp.,1941, § 18-1902; R.S.1943, § 18-602; Laws 1947, c. 47, § 2, p. 166.

Where the primary purpose and effect of an improvement is to benefit the public, the improvement is not local though it may incidentally benefit property in the particular locality. Hinman v. Temple, 133 Neb. 268, 274 N.W. 605 (1937).

18-603 Streets and highways; use.

Such city or village may appropriate an existing street or highway therefor, and may acquire, extend, widen or enlarge any street or highway for such purpose.

Source: Laws 1935, Spec. Sess., c. 34, § 3, p. 197; C.S.Supp.,1941, § 18-1903.

18-604 Private property; condemnation; ordinance; requirements.

When it shall become necessary to appropriate or damage any private property for the construction of such viaduct or subway, such appropriation shall be made by ordinance. Said ordinance to be headed Viaduct Ordinance shall be published once each week for three issues in a daily or weekly newspaper published in such city or village and of general circulation therein.

Said publication shall be sufficient notice to the owners, occupants, and parties interested, and all parties having equitable interests therein.

Source: Laws 1935, Spec. Sess., c. 34, § 4, p. 197; C.S.Supp.,1941, § 18-1904.

18-605 Repealed. Laws 1951, c. 101, § 127.

18-606 Repealed. Laws 1951, c. 101, § 127.

18-607 Repealed. Laws 1951, c. 101, § 127.

18-608 Repealed. Laws 1951, c. 101, § 127.

18-609 Repealed. Laws 1951, c. 101, § 127.

18-610 Bonds; election; notice; failure to approve; effect.

The original ordinance authorizing construction shall also give notice of an election to authorize issuance of bonds, for such amount as may be necessary to pay for such right-of-way and damages. A majority of those voting shall be sufficient to carry authority to issue bonds, as herein provided for. A failure to approve the issue of bonds shall cancel all proceedings except that in that event the city shall pay the cost of survey and preparation of plans and specifications that have been filed, and may levy a tax for that purpose.

Source: Laws 1935, Spec. Sess., c. 34, § 10, p. 199; C.S.Supp.,1941, § 18-1910; R.S.1943, § 18-610; Laws 1951, c. 101, § 62, p. 476; Laws 1971, LB 534, § 23.

18-611 Bonds; terms; payment.

Such city or village may, without further vote of the electors, issue negotiable bonds in such amount as may be needed to pay for such acquiring, extension or enlargement of any street or highway, and the amount of damages that may accrue by the appropriation thereof and construction of such viaduct or subway. Said bonds shall draw interest and may be sold at not less than par, and shall be payable in annual installments over a period of not to exceed twenty years, and be subject to retirement at the option of the city or village at any time after five years. Said bonds shall be payable out of the general fund, and the city or village shall annually make a levy and an appropriation for the payment of interest and the installment of the principal.

Source: Laws 1935, Spec. Sess., c. 34, § 11, p. 199; C.S.Supp.,1941, § 18-1911; R.S.1943, § 18-611; Laws 1969, c. 51, § 65, p. 312.

18-612 Bonds; vesting of powers.

On the approval of such bond issue by the electors, the mayor and council or board of trustees shall be vested with all the powers provided for them in sections 18-601 to 18-614, without the same having been specifically mentioned in said ordinance.

Source: Laws 1935, Spec. Sess., c. 34, § 12, p. 199; C.S.Supp.,1941, § 18-1912.

18-613 Department of Roads; construction contracts authorized.

The Department of Roads shall be authorized to enter into contracts for the construction of such viaduct or subway, in accordance with such plans and specifications, immediately upon the approval by the voters of such issuing of bonds.

Source: Laws 1935, Spec. Sess., c. 34, § 13, p. 199; C.S.Supp.,1941, § 18-1913.

18-614 Damages; payment methods.

In lieu of, or in addition to, the issuance of bonds, the city council or board of trustees may issue warrants for the payment of damages, and levy taxes, if necessary, to provide funds for their payment, or may temporarily borrow any funds in the treasury belonging to any other fund, for the purpose of making the payments herein required, restoring such funds within a reasonable time.

Source: Laws 1935, Spec. Sess., c. 34, § 14, p. 200; C.S.Supp.,1941, § 18-1914.

18-615 Funds; appropriation not required.

No previous annual appropriation of funds shall be required as a condition precedent to disbursement of any funds for the purpose of carrying out the objects of section 18-601.

Source: Laws 1935, Spec. Sess., c. 34, § 15, p. 200; C.S.Supp.,1941, § 18-1915.

18-616 Repealed. Laws 1951, c. 101, § 127.

18-617 Construction; resolution; notice.

Whenever the governing body of any city or village within the state believes the construction of a viaduct over or subway under the track or tracks of any railroad within its corporate limits is necessary for the public safety, convenience, and welfare, it shall pass a resolution so declaring. Thereafter such governing body shall publish a notice of the passage of said resolution six consecutive days in a newspaper published or of general circulation in said city or village or, if there be no such daily newspaper, then two consecutive weeks in a weekly newspaper published or of general circulation therein. The notice of the passage of said resolution, published as aforesaid, shall include an exact copy of same.

Source: Laws 1949, c. 28, § 1, p. 103.

18-618 Construction; contracts and agreements; conditions.

After the passage and publication of said resolution, said city or village shall have authority to enter into contracts and agreements with any railroad company or companies over or under whose railroad such structure is to be constructed providing for the construction and maintenance of such viaduct or subway and for the apportionment of the costs thereof; *Provided*, such agreement or contract shall not be effective nor shall any work be commenced until after such matter is submitted to a vote of the electors as hereinafter provided.

Source: Laws 1949, c. 28, § 2, p. 103.

18-619 Inability to reach agreement; complaint; service; railroad company; duties.

If no agreement can be reached between said city or village and the railroad company or companies for such construction or the division of the costs thereof, the city or village shall file complaint by its attorney with the city or village clerk on behalf of such city or village. It shall allege therein (1) the passage of the resolution hereinbefore referred to, (2) the location of the proposed viaduct or subway, (3) any facts which may show or tend to show why the proposed improvement is necessary for the public safety, convenience, and welfare, (4) that the city or village and the railroad company or companies are unable to agree as to the construction or the division of the cost thereof, and (5) asking the city or village governing body to make an order relative to such construction and apportioning the cost thereof between the railroad company or companies and the city or other public authority. A copy of said complaint shall be served upon the railroad company or companies affected. Thereafter, within a reasonable time to be fixed by the governing body, said railroad company or companies shall file with the city or village clerk plans and specifications for such viaduct or subway requested in said petition, together with an estimate by such railroad or railroads of the cost of construction and maintenance thereof.

Source: Laws 1949, c. 28, § 3, p. 103.

18-620 Complaint; hearing.

Upon the filing of such complaint and after the filing of plans and specifications as provided in section 18-619, the governing body shall fix a time for hearing said complaint and give notice thereof to the railroad company or companies. At the time so fixed the governing body shall sit as a board of equalization and assessment and at said hearing shall receive and hear such evidence as may be offered on the question of whether public safety, convenience, and welfare require the construction of said viaduct or subway, whether or not the cost thereof will exceed the benefits to be derived therefrom, and evidence on the question of the extent to which said railroad company or companies and the public will be respectively benefited by the construction thereof.

Source: Laws 1949, c. 28, § 4(1), p. 104.

18-621 Order; contents; filing; service; dismissal of petition.

Upon the conclusion of the hearing provided for in section 18-620, said governing body, as a board of equalization, shall make an order determining: (1) Whether or not the construction of said viaduct or subway is necessary for the public safety, convenience, and welfare; (2) whether or not the cost thereof will exceed the benefits to be derived therefrom; and (3) the proportion of the total benefits from the construction thereof to be derived by the public and by the railroad company or companies respectively and shall apportion the cost of construction and maintenance of such structure in the proportions found and shall apportion to the city and the railroad company or companies respectively such proportion of the cost of construction and maintenance of such structure as the board shall find the public and railroad company or companies are respectively benefited. Said order shall include the governing body's estimate of the cost of the proposed viaduct or subway including the cost of approaches

and damages caused to any property by construction thereof. A copy of said order together with the plans, specifications, and estimates made therein shall be signed by the presiding officer and a majority of the members of said body who concur therein, and filed with the city clerk and a copy thereof served on the railroad company or companies, parties thereto. If the governing body shall find that construction of such viaduct or subway is not necessary for public safety, convenience, or welfare or that the cost thereof exceeds the benefits to be derived therefrom it shall dismiss said petition.

Source: Laws 1949, c. 28, § 4(2), p. 104.

18-622 Order; appeal; transcript; cost; standard of review.

If any railroad company, party to said proceedings, shall be dissatisfied with said order it may appeal therefrom to the district court in the county in which said city or village is situated. Such appeal shall be perfected by the railroad company filing, with the city clerk of said city or village within ten days after said order is served upon it, a written notice of its intention to appeal therefrom. Within twenty days after the filing of such notice of appeal the city or village clerk shall file with the clerk of the district court of said county a transcript containing the complaint and the order appealed from together with such other documents as may have been filed in said proceedings. The railroad company appealing shall pay to the city clerk the cost of preparing such transcript. Upon such appeal the district court, without jury, shall hear and determine de novo all of the issues determined by the said board except the question of whether or not the construction of said viaduct or subway is necessary for the public safety, convenience, and welfare. Said court shall hear and determine such an appeal promptly and speedily. Its decision shall be subject to review by appeal or otherwise as other judgments of the district court are reviewable.

Source: Laws 1949, c. 28, § 4(3), p. 105.

18-623 Construction; approval by electors; ballot; appeal; effect.

The governing body of any such city or village shall, after agreeing with such railroad company or companies as provided in section 18-618 or after an order, other than one of dismissal, of the governing body, sitting as a board of equalization as provided in sections 18-620 to 18-622, at the next general election or at a special election called for the purpose, submit to the electors of the said city or village the question of whether such village or city and said railroad company or companies shall construct and maintain a viaduct or subway in accordance with any agreement made or in accordance with the order of the governing body of such city or village, and whether such city or village shall have the power to levy taxes or borrow money and pledge the property and credit of said city or village upon its negotiable bonds to pay its proportion of all costs connected therewith. The ballot shall contain concise statements, to be prepared by the city attorney, of the original ordinance declaring the necessity and, if said structure is to be constructed under the provisions of any agreement, a concise statement of the provisions of the agreement or, if it is to be constructed by virtue of an order of the governing body, a concise statement of said order, and in any instance a statement of the estimated amount of the costs of the construction and maintenance of said structure, including the cost of acquisition of or damage to property to be borne

by said city or village and the method by which said share of such costs of such city or village is to be obtained. The city or village may, at its option, proceed with said election notwithstanding the pendency of any appeal of any railroad company as hereinbefore provided.

Source: Laws 1949, c. 28, § 5, p. 105.

18-624 Approval by electors; governing body; powers.

If a majority of those voting on the proposition of the construction of said viaduct or subway approve the same by their vote, the governing body of any such city or village shall have the power to levy taxes, borrow money, and pledge the property and credit of said city or village upon its negotiable bonds in an amount not exceeding its proportion of the aggregate cost of the construction and maintenance of such viaduct or subway, and to pay for the acquisition of or damage to property by reason of such construction.

Source: Laws 1949, c. 28, § 6, p. 106.

18-625 Approval by electors; governing body; duties.

If the construction is approved by the electors as hereinbefore provided, the governing body of such city or village shall (1) by resolution approve the detailed plans and specifications for such construction, including a map showing the exact location of such viaduct or subway, (2) by resolution make provision for the assumption of liability, the payment of consequential damages to property owners resulting from such proposed construction, and the payment of damages for property taken therefor, and (3) award and pay damages as provided in sections 76-704 to 76-724.

Source: Laws 1949, c. 28, § 7, p. 106; Laws 1953, c. 39, § 1, p. 133.

18-626 Streets and highways; use.

Such city or village may appropriate any existing street or highway therefor and may acquire, extend, widen, or enlarge any street or highway for such purpose.

Source: Laws 1949, c. 28, § 8, p. 107.

18-627 Private property; condemnation; resolution; requirements; procedure.

When it shall become necessary to appropriate or damage any private property for the construction of such viaduct or subway, such appropriation shall be made by resolution. The resolution to be headed Viaduct Resolution shall be published once each week for three weeks in a daily or weekly newspaper published in such city or village or in general circulation therein. The publication shall be sufficient notice to the owners, occupants, and parties interested, and all parties having equitable interest therein. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1949, c. 28, § 9, p. 107; Laws 1951, c. 101, § 63, p. 476.

18-628 Repealed. Laws 1951, c. 101, § 127.

18-629 Repealed. Laws 1951, c. 101, § 127.

18-630 Repealed. Laws 1951, c. 101, § 127.

18-631 Repealed. Laws 1951, c. 101, § 127.

18-632 Repealed. Laws 1951, c. 101, § 127.

18-633 Construction; cost; deposit; mandamus.

When any such project has been agreed to or when the division of costs has been otherwise finally determined and when such proposal has been approved by a vote all in the manner heretofore provided, the railroad company or companies affected shall within ten days' notice or demand deposit with the treasurer of the governing body the amount of its proportionate share so determined. The district court is hereby given jurisdiction upon the application of the governing body of the municipality to compel such deposit by mandamus together with such penalties as may be found and deemed reasonable by the court.

Source: Laws 1949, c. 28, § 15, p. 109.

18-634 Construction; contract; letting.

After such city or village has made provisions for financing its proportionate share of the costs and has complied with the provisions of sections 18-617 to 18-636, and the provisions of section 18-633 have been complied with, it shall proceed to construct, in accordance with plans and specifications previously approved, such viaduct or subway, or such city or village is hereby authorized to contract for such construction in accordance with such plans and specifications. Any such contract shall be let as provided by law.

Source: Laws 1949, c. 28, § 16, p. 109.

18-635 Railroad company; obligations; sections; effect.

Nothing in sections 18-617 to 18-636 shall modify, change, or abrogate any obligation of any railroad company or companies to maintain, reconstruct, or keep in repair any viaduct or subway heretofore built or any replacement thereof under any agreement, statute, or ordinance previously in effect.

Source: Laws 1949, c. 28, § 17, p. 109.

This section is not a special saving clause but is a proviso. State ex rel. City of Grand Island v. Union Pacific R. R. Co., 152 Neb. 772, 42 N.W.2d 867 (1950).

18-636 Sections, how construed.

Nothing in sections 18-617 to 18-636 shall be construed to repeal or amend any statute except those statutes hereinafter specifically repealed, but shall be construed as independent, supplemental, and additional thereto, and as an independent act to provide the entire powers, facilities, and expenditures necessary to accomplish the elimination of grade crossings in the manner herein specified. No other statute shall be effectual as a limitation upon the powers or proceedings herein contained. Other statutes may be relied upon, if need be, to supplement and effectuate the purposes herein contained.

Source: Laws 1949, c. 28, § 18, p. 109.

This section is not a special saving clause but is a proviso. State ex rel. City of Grand Island v. Union Pacific R. R. Co., 152 Neb. 772, 42 N.W.2d 867 (1950).

ARTICLE 7

PUBLIC DOCKS

Section
18-701. Transferred to section 13-1401.
18-701.01. Transferred to section 13-1402.
18-702. Transferred to section 13-1403.
18-703. Transferred to section 13-1404.
18-704. Transferred to section 13-1405.
18-705. Transferred to section 13-1406.
18-706. Transferred to section 13-1407.
18-707. Transferred to section 13-1408.
18-708. Transferred to section 13-1409.
18-709. Transferred to section 13-1410.
18-710. Transferred to section 13-1411.
18-711. Transferred to section 13-1412.
18-712. Transferred to section 13-1413.
18-713. Transferred to section 13-1414.
18-714. Transferred to section 13-1415.
18-715. Transferred to section 13-1416.
18-716. Transferred to section 13-1417.

18-701 Transferred to section 13-1401.

18-701.01 Transferred to section 13-1402.

18-702 Transferred to section 13-1403.

18-703 Transferred to section 13-1404.

18-704 Transferred to section 13-1405.

18-705 Transferred to section 13-1406.

18-706 Transferred to section 13-1407.

18-707 Transferred to section 13-1408.

18-708 Transferred to section 13-1409.

18-709 Transferred to section 13-1410.

18-710 Transferred to section 13-1411.

18-711 Transferred to section 13-1412.

18-712 Transferred to section 13-1413.

18-713 Transferred to section 13-1414.

18-714 Transferred to section 13-1415.

18-715 Transferred to section 13-1416.

18-716 Transferred to section 13-1417.

ARTICLE 8
SHADE TREES

Section
18-801. Repealed. Laws 1997, LB 269, § 80.
18-802. Repealed. Laws 1997, LB 269, § 80.
18-803. Repealed. Laws 1997, LB 269, § 80.
18-804. Repealed. Laws 1997, LB 269, § 80.
18-805. Repealed. Laws 1997, LB 269, § 80.
18-806. Repealed. Laws 1997, LB 269, § 80.
18-807. Repealed. Laws 1997, LB 269, § 80.

18-801 Repealed. Laws 1997, LB 269, § 80.

18-802 Repealed. Laws 1997, LB 269, § 80.

18-803 Repealed. Laws 1997, LB 269, § 80.

18-804 Repealed. Laws 1997, LB 269, § 80.

18-805 Repealed. Laws 1997, LB 269, § 80.

18-806 Repealed. Laws 1997, LB 269, § 80.

18-807 Repealed. Laws 1997, LB 269, § 80.

ARTICLE 9
RECREATION AREAS

Section
18-901. Transferred to section 13-1001.
18-902. Transferred to section 13-1002.
18-903. Transferred to section 13-1003.
18-904. Transferred to section 13-1004.
18-905. Transferred to section 13-1005.
18-906. Transferred to section 13-1006.

18-901 Transferred to section 13-1001.

18-902 Transferred to section 13-1002.

18-903 Transferred to section 13-1003.

18-904 Transferred to section 13-1004.

18-905 Transferred to section 13-1005.

18-906 Transferred to section 13-1006.

ARTICLE 10
STATE ARMORIES

Section
18-1001. Public policy; sites; acquisition; conveyance to state; construction of buildings.
18-1002. Site; purchase; payment.

Section
18-1003. Site; condemnation; payment.
18-1004. Armory site; conveyances.
18-1005. Tax levy; state armory site fund; use.
18-1006. Warrants; issuance; amount; fund; purpose.

18-1001 Public policy; sites; acquisition; conveyance to state; construction of buildings.

The Legislature hereby declares the public policy of the State of Nebraska to be that the acquisition of real estate sites for the construction of state armories within the corporate limits of cities or villages for the uses and purposes of the Nebraska National Guard and State Guard is a matter of general state concern and that the use of said sites is a state use and not a city, village or local use. One of the corporate purposes of all cities and villages is hereby declared to be to acquire real estate sites within their corporate limits and to convey the same without consideration to the State of Nebraska for the uses and purposes of the Nebraska National Guard and State Guard, as provided in sections 18-1002 to 18-1005. Notwithstanding any more general or special law respecting armories in force and effect in this state, the local governing bodies of cities or villages therein are hereby empowered by ordinance to acquire through the exercise of the right of eminent domain, or otherwise, real estate to be used as a site or sites for the construction of state armories to be devoted to the uses and purposes of the Nebraska National Guard and State Guard and to convey such real estate without consideration, when acquired, to the State of Nebraska to the end that through state aid or federal aid, or both, state armory buildings may be constructed thereon without cost to such cities or villages other than the cost to said cities or villages of said real estate so acquired and conveyed.

Source: Laws 1935, Spec. Sess., c. 10, § 1, p. 69; Laws 1941, c. 130, § 7, p. 491; C.S.Supp.,1941, § 18-1801.

18-1002 Site; purchase; payment.

Whenever the Nebraska National Guard and State Guard desire any city or village in this state to acquire at the cost of not to exceed ten thousand dollars to such city or village by condemnation, or otherwise, any lot, piece or parcel of land within the corporate limits of such city or village for a state armory site, the Adjutant General shall notify the municipal clerk of the local governing body thereof in writing to that effect. The clerk shall present the notice to the local governing body at its next regular or special meeting; and, if a majority of the members thereof, the vote thereon to be recorded by yeas and nays in the minutes of the proceedings of such city or village, shall favor the acquisition of said lot, piece or parcel of land, as aforesaid, they shall so order by resolution duly passed and approved and spread at large upon the minutes. The mayor or chairman of the board of trustees, as the case may be, shall thereupon designate a committee from the local governing body to negotiate with the owner or owners of said real estate for the purchase thereof for the purposes and uses aforesaid. If the committee and the owners are able to agree on the price, value and title of the land, the committee shall report in writing its agreement with the owners to the local governing body. If the agreement is ratified, approved, and confirmed in all things by the local governing body by a majority vote of its members, by ordinance upon receipt of a deed properly executed, approved as to form and substance by the city or village attorney in

writing, from the owner or owners, as grantors to the city or village, as the case may be, as grantee, said governing body shall direct the issuance through its proper officers of warrants upon the state armory site fund, as authorized by sections 18-1005 and 18-1006. Such warrants so issued shall be drawn payable to the owner or owners of the land.

Source: Laws 1935, Spec. Sess., c. 10, § 1, p. 70; Laws 1941, c. 130, § 7, p. 492; C.S.Supp.,1941, § 18-1801.

18-1003 Site; condemnation; payment.

If the owner or owners and the committee cannot agree on the price, value, or title of the land, within a period of negotiation extending not more than ten days from the date of appointment of the committee by the local governing body, the committee shall report the fact of disagreement to the mayor and council or to the chairman and board of trustees, as the case may be. The municipal clerk shall forthwith notify in writing the Adjutant General to that effect. Whereupon it shall be the duty of the Attorney General, collaborating with the city or village attorney, to institute proper legal proceedings to acquire the land for state use through the exercise of the power of eminent domain. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. Payment of the award made or any other necessary costs or expenses incident to the condemnation suit shall be made by the city or village.

Source: Laws 1935, Spec. Sess., c. 10, § 1, p. 71; Laws 1941, c. 130, § 7, p. 493; C.S.Supp.,1941, § 18-1801; R.S.1943, § 18-1003; Laws 1951, c. 101, § 65, p. 477; Laws 1959, c. 54, § 1, p. 246.

18-1004 Armory site; conveyances.

Notwithstanding any more general or special law respecting sale or conveyance of real estate now or hereafter owned by cities and villages in force and effect in this state, the local governing bodies thereof are hereby empowered by ordinance to direct their proper officers to execute deeds for conveyance of any real estate of such cities or villages without consideration to the State of Nebraska for the construction of state armory buildings thereon. Such construction shall be made without cost to such cities or villages.

Source: Laws 1935, Spec. Sess., c. 10, § 1, p. 71; Laws 1941, c. 130, § 7, p. 493; C.S.Supp.,1941, § 18-1801; R.S.1943, § 18-1004; Laws 1988, LB 793, § 6.

18-1005 Tax levy; state armory site fund; use.

All cities or villages organized under the laws of the State of Nebraska shall have power and authority to levy a special tax each year of not more than five and two-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village for the acquisition of real estate by agreement with the owner or owners or by condemnation as provided in sections 18-1002 and 18-1003 to be used for state armory sites. Such special levy shall be made by the same local governing body and shall be levied in the same manner as in the case of general city or village taxes. The proceeds of such levy shall inure and be credited to the state armory site fund which the local governing body is hereby authorized to create and manage. Revenue raised by such special levy shall be used only for the purpose of acquiring real

estate for a state armory site within the corporate limits of such city or village or in the payment of warrants as authorized by section 18-1006.

Source: Laws 1935, Spec. Sess., c. 10, § 1, p. 71; Laws 1941, c. 130, § 7, p. 493; C.S.Supp.,1941, § 18-1801; R.S.1943, § 18-1005; Laws 1953, c. 287, § 28, p. 947; Laws 1979, LB 187, § 69; Laws 1992, LB 719A, § 70.

18-1006 Warrants; issuance; amount; fund; purpose.

Any city or village may anticipate the collection of such tax to be budgeted and levied in its adopted budget statement and for that purpose may issue its warrants, in a sum amounting to eighty-five percent of the tax to be levied, as aforesaid, for the amount of any award issued in condemnation and for the costs and expenses incident thereto, as provided in section 18-1003. Warrants so issued shall be secured by such tax which shall be assessed and levied, as provided by law, and shall be payable only out of funds derived from such tax. In any case in which warrants are issued, as herein authorized, it shall be the duty of such city or village, on receipt of such tax when paid, to hold the same as a separate fund, to be known as the state armory site fund, to the amount of the warrants so issued, and the interest thereon, for the purpose of paying or redeeming such warrants.

Source: Laws 1935, Spec. Sess., c. 10, § 1, p. 72; Laws 1941, c. 130, § 7, p. 494; C.S.Supp.,1941, § 18-1801; R.S.1943, § 18-1006; Laws 1959, c. 54, § 2, p. 247; Laws 1969, c. 145, § 25, p. 687.

ARTICLE 11
REFUNDING INDEBTEDNESS

Section
18-1101. Refunding outstanding instruments; powers.
18-1102. Refunding instruments; how issued.

18-1101 Refunding outstanding instruments; powers.

The mayor and council of any city or the chairman and board of trustees of any village of the State of Nebraska, which has issued valid pledge warrants, revenue bonds, revenue notes, or revenue debentures, which instruments are outstanding and unpaid, may take up and pay off any such outstanding instruments whenever the same can be done by lawful means by the issue and sale, or the issue and exchange therefor, of other pledge warrants, revenue bonds, revenue notes, or revenue debentures. Such instruments shall not be general obligations of the municipality. Any city or village which has issued and has outstanding valid pledge warrants, revenue bonds, revenue notes, or revenue debentures which are unpaid, some of which are secured by the pledge of the revenue and earnings of one public utility and others are secured by the pledge of the revenue and earnings of another public utility, may take up and pay off all such outstanding instruments by the issuance and sale of its combined revenue bonds or revenue notes which may be secured by the pledge of the revenue and earnings of any two or more of such public utilities; such a city or village may enter into such a contract or contracts in connection therewith as may be proper and necessary.

Source: Laws 1937, c. 40, § 1, p. 178; Laws 1939, c. 13, § 1, p. 88; C.S.Supp.,1941, § 18-2201; R.S.1943, § 18-1101; Laws 1945, c. 32, § 1, p. 152; Laws 1971, LB 984, § 1; Laws 1976, LB 825, § 5.

18-1102 Refunding instruments; how issued.

Whenever it is desired to issue pledge warrants, revenue bonds or revenue debentures under section 18-1101, the corporate authorities described therein shall, by resolution entered in the minutes of their proceedings, provide for the issuance and sale or exchange of the refunding instruments.

Source: Laws 1937, c. 40, § 2, p. 179; C.S.Supp.,1941, § 18-2202.

ARTICLE 12

MISCELLANEOUS TAXES

Section

18-1201 Tax; amount; purposes.

All cities and villages organized under the laws of the State of Nebraska may levy a special tax each year of not more than five cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village for the special purposes set forth in this section. Such special levy shall be made by the same officers or board and be levied in the same manner as general city or village taxes. Revenue raised by such a special levy may be used for purchasing and maintaining public safety equipment, including, but not limited to, vehicles or rescue or emergency first-aid equipment for a fire or police department of such city or village, for purchasing real estate for fire or police station quarters or facilities, for erecting, building, altering, or repairing fire or police station quarters or facilities, for purchasing, installing, and equipping an emergency alarm or communication system, or for paying off bonds authorized by section 18-1202. Such revenue may be accumulated in a sinking fund or sinking funds to be used for any such purpose.

Source: Laws 1915, c. 218, § 1, p. 487; C.S.1922, § 4469; C.S.1929, § 18-801; R.S.1943, § 18-1201; Laws 1945, c. 33, § 1, p. 154; Laws 1953, c. 287, § 29, p. 947; Laws 1963, c. 81, § 1, p. 289;

Laws 1969, c. 102, § 1, p. 477; Laws 1979, LB 187, § 70; Laws 1988, LB 369, § 1; Laws 1992, LB 719A, § 71; Laws 1993, LB 58, § 1.

Territory annexed to village was subject to taxation for fire protection. Village of Niobrara v. Tichy, 158 Neb. 517, 63 N.W.2d 867 (1954).

18-1202 Tax anticipation bonds; issuance; interest; redemption.

Any city or village which has levied or intends to levy a tax as authorized by section 18-1201 for the purposes stated in such section may anticipate the collection of such taxes, including the anticipation of collections from levies to be made in future years, and for such purpose may issue tax anticipation bonds which shall be payable in not exceeding twenty years and may bear interest, payable annually or semiannually, at such rate or rates as the mayor and council or chairperson and board of trustees may determine. The total of principal and interest payable on such bonds in any calendar year shall not exceed ninety percent of the anticipated tax collection for such calendar year on the assumption that the taxable valuation for such city or village in all succeeding years shall be the same as the taxable valuation most recently determined prior to passage of the ordinance authorizing such bonds and applying the tax levy made or agreed to be made by the city or village, but not exceeding five cents on each one hundred dollars, and using tax due and delinquency dates in effect at the time of passage of the bond ordinance. The city or village may agree in such bond ordinance to make and to continue to make a levy under section 18-1201 until such bonds and interest thereon are fully paid. Such bonds shall be secured by such tax so assessed and levied and shall be payable only out of the funds derived from such tax. It shall be the duty of such city or village on receipt of such taxes to hold the same as a separate fund to the amount of the bonds so issued and the interest thereon for the purpose of paying or redeeming such bonds.

Source: Laws 1915, c. 218, § 2, p. 487; C.S.1922, § 4470; C.S.1929, § 18-802; R.S.1943, § 18-1202; Laws 1947, c. 48, § 1, p. 167; Laws 1969, c. 51, § 66, p. 313; Laws 1972, LB 884, § 1; Laws 1979, LB 187, § 71; Laws 1988, LB 369, § 2; Laws 1992, LB 719A, § 72; Laws 1993, LB 58, § 2.

18-1203 Musical and amusement organizations; tax; amount; petition for higher tax; election.

All incorporated cities and villages within the State of Nebraska are hereby expressly authorized, upon a three-fourths vote of all of the members elected to the city or village board, to levy not to exceed two and one-tenth cents on each one hundred dollars upon the taxable value of all the taxable property in such cities or villages each year to establish and maintain a vocal, instrumental, or amusement organization for the purpose of rendering free public concerts, music festivals, and entertainments within such city or village limits for the people of such city or village and locality. When such vote has been so made and recorded by the city council or village board, a tax of not to exceed two and one-tenth cents on each one hundred dollars of the taxable value of all the taxable property of such city or village shall be levied by such city or village, in addition to all other general and special taxes, for the support, maintenance, and necessary expenses of such vocal, instrumental, or amusement organiza-

tion. Any incorporated city or village may levy each year a tax of not exceeding three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such municipality for the maintenance of a municipal band or other vocal, instrumental, or amusement organization for the purpose of rendering free public concerts, music festivals, and entertainments when a petition signed by ten percent of the legal voters of an incorporated city or village, as shown by the last regular municipal election, is filed with the clerk of the city or village and requests the following question to be submitted to the voters of the city or village: Shall a tax of not exceeding ..... cents on each one hundred dollars upon the taxable value of all the taxable property of ....., Nebraska, be levied each year for the purpose of providing a fund for the maintenance of a municipal band or other vocal, instrumental, or amusement organization for the purpose of rendering free public concerts, music festivals, and entertainments? When such petition is filed, the board of trustees, council, or city commission shall cause the question to be submitted to the voters of the city or village at the next general municipal election, and if a majority of the votes cast at the election favor such proposition, the board of trustees, council, or city commission shall then levy such tax to maintain such municipal band or other vocal, instrumental, or amusement organization for the purposes enumerated in this section.

Source: Laws 1915, c. 219, §§ 1, 2, p. 488; C.S.1922, §§ 4471, 4472; Laws 1927, c. 40, § 1, p. 172; C.S.1929, § 18-901; R.S.1943, § 18-1203; Laws 1953, c. 287, § 30, p. 948; Laws 1979, LB 187, § 72; Laws 1992, LB 719A, § 73.

18-1204 Musical and amusement organizations; power to tax; withdrawal; reauthorization.

When a petition signed by ten percent of the legal voters of such incorporated city or village, as shown by the last regular municipal election, is filed with the clerk of the city or village requesting that the question be submitted to the voters of withdrawing the authority to tax under section 18-1203, the board of trustees or city council or commissioners shall submit the question of withdrawal at the next general municipal election. The question on the ballot shall be as follows: Shall the power heretofore granted in ....., Nebraska, to levy a tax of ..... cents on each one hundred dollars upon the taxable value of all the taxable property of such city or village for the purpose of providing a fund for the maintenance of a municipal band or other vocal, instrumental, or amusement organization for the purpose of rendering free public concerts, music festivals, and entertainments be withdrawn? If a majority of the votes cast favor such withdrawal, no further levy for the purpose shall thereafter be made until the proposition is again resubmitted to the people. After the proposition for withdrawing the right to tax has carried, no further submission of a proposition to levy the tax shall be made for at least two years.

Source: Laws 1927, c. 40, § 1, p. 173; C.S.1929, § 18-901; R.S.1943, § 18-1204; Laws 1953, c. 287, § 31, p. 949; Laws 1979, LB 187, § 73; Laws 1992, LB 719A, § 74.

18-1205 Musical and amusement organizations; tax; inclusion in appropriation ordinance.

When any incorporated city or village has voted as required by section 18-1203 to establish and maintain a vocal, instrumental, or amusement organization, there shall thereafter be included in the annual estimate of expenses of the city or village a levy of not to exceed two and one-tenth cents or three and five-tenths cents on each one hundred dollars, as the case may be, upon the taxable value of the taxable property of such city or village for each year for the purpose. The levy so made shall be included in the appropriation ordinance.

Source: Laws 1915, c. 219, § 2, p. 488; C.S.1922, § 4472; Laws 1927, c. 40, § 2, p. 174; C.S.1929, § 18-902; R.S.1943, § 18-1205; Laws 1953, c. 287, § 32, p. 950; Laws 1979, LB 187, § 74; Laws 1992, LB 719A, § 75.

18-1206 Musical and amusement organizations; leader; employment.

Every such vocal, instrumental or amusement organization herein contemplated shall be under the instruction and guidance of a leader, who may be nominated in the first instance by the organization or association but whose nomination, term of employment, and compensation shall be subject to the approval of the city council of said city or village board of said village.

Source: Laws 1915, c. 219, § 3, p. 488; C.S.1922, § 4473; C.S.1929, § 18-903.

18-1207 Musical and amusement organizations; rules and regulations.

The city council of each such city, or village board of each such village, making provision for any vocal, instrumental or amusement organization, shall make and adopt all suitable and necessary rules, regulations, and bylaws concerning the government, organization, expenditures, and other necessary matters pertaining to such organization, and for that purpose shall appoint and designate three members of the city council or village board as a committee on municipal amusements and entertainments.

Source: Laws 1915, c. 219, § 4, p. 488; C.S.1922, § 4474; C.S.1929, § 18-904.

18-1208 Repealed. Laws 1947, c. 179, § 4.

18-1209 Repealed. Laws 1947, c. 179, § 4.

18-1210 Repealed. Laws 1947, c. 179, § 4.

18-1211 Repealed. Laws 1947, c. 179, § 4.

18-1212 Repealed. Laws 1947, c. 179, § 4.

18-1213 Repealed. Laws 1947, c. 179, § 4.

18-1214 Motor vehicles; local taxation; credited to road fund; use.

All cities and villages may levy a tax on all motor vehicles owned or used in such city or village, which tax shall be paid to the designated county official of the county in which such city or village is located when the registration fees as provided in the Motor Vehicle Registration Act are paid. Such taxes shall be remitted to the county treasurer for credit to the road fund of such city or village. Such funds shall be used by such city or village for constructing, resurfacing, maintaining, or improving streets, roads, alleys, public ways, or

parts thereof or for the amortization of bonded indebtedness when created for such purposes.

Source: Laws 1963, c. 348, § 3, p. 1119; Laws 1988, LB 958, § 1; Laws 1989, LB 57, § 1; Laws 1993, LB 112, § 2; Laws 2005, LB 274, § 224.

Cross References

Motor Vehicle Registration Act, see section 60-301.

18-1215 Special assessment district; ordinance; file copy with register of deeds.

Whenever a municipality has enacted an ordinance creating a special assessment district, it shall be the duty of such municipality to file a copy of such ordinance in the office of the register of deeds of the county.

Source: Laws 1973, LB 373, § 2.

18-1216 Collection of special assessments; powers; notice; liability.

(1) Any city of the metropolitan, primary, first, or second class or any village shall have authority to collect the special assessments which it levies and to perform all other necessary functions related thereto including foreclosure. The governing body of any city or village collecting its own special assessments shall direct that notice that special assessments are due shall be mailed or otherwise delivered to the last-known address of the person against whom such special assessments are assessed or to the lending institution or other party responsible for paying such special assessments. Failure to receive such notice shall not relieve the taxpayer from any liability to pay such special assessments and any interest or penalties accrued thereon.

(2) A city of the second class or village collecting its own assessments under this section shall (a) file notice of the assessments and the amount of assessment being levied for each lot or tract of land to the register of deeds of the county in which the municipality is located and (b) file a release of assessment upon final payment of each assessment with the register of deeds. Such register of deeds shall index the assessment against the individual lots and tracts of land and have such information available to the public.

Source: Laws 1983, LB 391, § 3; R.S.1943, (1991), § 19-4501; Laws 1996, LB 962, § 3.

18-1217 Transferred to section 13-311.

18-1218 Transferred to section 13-312.

18-1219 Transferred to section 13-313.

18-1220 Transferred to section 13-314.

18-1221 Pension or retirement system; tax; amount; use.

Subject to the levy limitations contained in section 77-3442, but notwithstanding any limitations in any other law or city home rule charter, any city or village of this state which provides a pension or retirement system for all or a portion of its employees shall levy a tax in addition to all other taxes in order to defray the cost to such city or village in meeting the obligations arising by

reason of providing such pension or retirement system. The revenue so raised shall be limited to the amount required to defray the cost to such city or village in meeting the obligations arising by reason of providing such pension or retirement system, and shall be used for no other purpose.

Source: Laws 1971, LB 667, § 2; R.S.1943, (1977), § 68-620.01; Laws 1979, LB 187, § 182; Laws 1996, LB 1114, § 34.

ARTICLE 13

MUNICIPAL PLANNING

Section
18-1301. Transferred to section 19-924.
18-1302. Transferred to section 19-925.
18-1303. Transferred to section 19-926.
18-1304. Transferred to section 19-927.
18-1305. Transferred to section 19-928.
18-1306. Transferred to section 19-929.
18-1307. Repealed. Laws 1967, c. 85, § 3.

18-1301 Transferred to section 19-924.

18-1302 Transferred to section 19-925.

18-1303 Transferred to section 19-926.

18-1304 Transferred to section 19-927.

18-1305 Transferred to section 19-928.

18-1306 Transferred to section 19-929.

18-1307 Repealed. Laws 1967, c. 85, § 3.

ARTICLE 14

MUNICIPAL PUBLICITY

Section
18-1401. Transferred to section 13-315.
18-1402. Transferred to section 13-316.

18-1401 Transferred to section 13-315.

18-1402 Transferred to section 13-316.

ARTICLE 15

AVIATION FIELDS

Section
18-1501. Acquisition; buildings; improvements; authorized; charges.
18-1502. Bonds; terms; interest; approval by electors.
18-1503. Tax in lieu of bonds; amount; approval by electors; limitations.
18-1504. Acquisition by lease; election unnecessary.
18-1505. Construction, leasing, improvement, maintenance, and management; annual tax; election not required.
18-1506. Repealed. Laws 2001, LB 173, § 22.
18-1507. Site; federal and state specifications.
18-1508. Ordinances, rules, and regulations; authorized; applicability.

Section
18-1509. Lease or disposition; when authorized.

18-1501 Acquisition; buildings; improvements; authorized; charges.

Any city or village, within the State of Nebraska, is hereby authorized to acquire by lease, for a term not to exceed twenty-five years, purchase, condemnation, or otherwise, the necessary land within or without such city or village for the purpose of establishing an aviation field and to erect thereon such buildings and make such improvements, as may be necessary for the purpose of adapting the field to the use of aerial traffic, and may, from time to time, fix and establish a schedule of charges for the use thereof, which charges shall be used in connection with the maintenance and operation of any such field and the activities thereof. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1929, c. 35, § 1, p. 147; C.S.1929, § 19-801; Laws 1943, c. 39, § 1(1), p. 182; R.S.1943, § 19-801; Laws 1947, c. 53, § 1, p. 180; Laws 1951, c. 101, § 66, p. 478.

Cross References

Acquisition of airports and landing fields by purchase, condemnation, or otherwise, see sections 3-203 and 3-204.
Assistance from the Department of Aeronautics, see Chapter 3, article 1.

City is liable for negligence in operation of aviation field. Brasier v. Cribbett, 166 Neb. 145, 88 N.W.2d 235 (1958).

A majority vote is sufficient to authorize issuance of bonds to establish aviation field under home rule charter of the city of Lincoln. State ex rel. City of Lincoln v. Johnson, 117 Neb. 301, 220 N.W. 273 (1928).

18-1502 Bonds; terms; interest; approval by electors.

For the purpose of acquiring and improving an aviation field as authorized in section 18-1501, any city or village may issue and sell bonds of such city or village to be designated aviation field bonds to provide the necessary funds therefor in an amount not to exceed seven-tenths of one percent of the taxable valuation of all the taxable property in such city or village. Such bonds shall become due in not to exceed twenty years from the date of issuance and shall draw interest payable semiannually or annually. Such bonds may not be sold for less than par and in no case without the proposition of issuing the same having first been submitted to the legal electors of such city or village at a general or special election held therein and a majority of the votes cast upon the question of issuing the bonds being in favor thereof. The authority to sell such bonds shall not be limited by any other or special provision of law found elsewhere outside of sections 18-1501 to 18-1509.

Source: Laws 1929, c. 35, § 1, p. 148; C.S.1929, § 19-801; Laws 1943, c. 39, § 1(2), p. 182; R.S.1943, § 19-802; Laws 1945, c. 34, § 17, p. 170; Laws 1947, c. 15, § 12, p. 89; Laws 1947, c. 53, § 2, p. 181; Laws 1955, c. 50, § 2, p. 170; Laws 1969, c. 51, § 67, p. 313; Laws 1979, LB 187, § 76; Laws 1992, LB 719A, § 76.

Cross References

Revised Airports Act, section included, see section 3-238.

Airport Authority Act did not amend this section as it was an independent act dealing with a different subject. Obitz v. Airport Authority of City of Red Cloud, 181 Neb. 410, 149 N.W.2d 105 (1967).

This section relates to right of municipality to acquire an airport or other air navigation facility. Brasier v. Cribbett, 166 Neb. 145, 88 N.W.2d 235 (1958).

18-1503 Tax in lieu of bonds; amount; approval by electors; limitations.

For the purpose of acquiring and improving the aviation field, the city or village may, in lieu of issuing and selling bonds, levy an annual tax of not to exceed seven cents on each one hundred dollars upon the taxable value of all the taxable property within the corporate limits of such city or village, which tax shall not be levied or collected until the proposition of levying the same has first been submitted to the legal electors of such city or village at a general or special election held therein and the majority of votes cast upon the question of levying such tax are in favor thereof. Such levy shall be authorized for a term not exceeding ten years, and the proposition submitted to the electors shall specify the number of years for which it is proposed to levy such tax. If funds for such purposes are raised by the levy of tax, no part of the funds so accruing shall be used for any other purpose.

Source: Laws 1929, c. 35, § 1, p. 148; C.S.1929, § 19-801; Laws 1943, c. 39, § 1(3), p. 183; R.S.1943, § 19-803; Laws 1947, c. 53, § 3, p. 181; Laws 1953, c. 287, § 33, p. 950; Laws 1979, LB 187, § 77; Laws 1992, LB 719A, § 77.

Airport Authority Act did not amend this section as it was an independent act dealing with a different subject. Obitz v. Airport Authority of City of Red Cloud, 181 Neb. 410, 149 N.W.2d 105 (1967).

18-1504 Acquisition by lease; election unnecessary.

It shall not be necessary, in order to acquire the necessary land for an aviation field by lease, to submit the proposition of such acquisition by lease to the legal voters of such city or village.

Source: Laws 1943, c. 39, § 1(4), p. 183; R.S.1943, § 19-803.01; Laws 1947, c. 53, § 4, p. 182.

18-1505 Construction, leasing, improvement, maintenance, and management; annual tax; election not required.

For the purpose of the construction, leasing, improvement, maintenance, and management of an aviation field and for the payment of persons employed in the performance of labor in connection therewith, any city or village may, without a vote of the legal electors, levy an annual tax of not to exceed three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village. No part of the funds so levied and collected shall be used for any other purpose.

Source: Laws 1943, c. 39, § 1(5), p. 183; R.S.1943, § 19-803.02; Laws 1953, c. 287, § 34, p. 950; Laws 1955, c. 51, § 1, p. 171; Laws 1979, LB 187, § 78; Laws 1992, LB 719A, § 78.

Airport Authority Act did not amend this section as it was an independent act dealing with a different subject. Obitz v. Airport Authority of City of Red Cloud, 181 Neb. 410, 149 N.W.2d 105 (1967).

18-1506 Repealed. Laws 2001, LB 173, § 22.

18-1507 Site; federal and state specifications.

No airport or land intended for airport purposes shall be acquired by any city or village through the issue and sale of bonds, or the levy of taxes, unless the site, when developed and ready for public use, meets federal and state specifications for an airport open to the public.

Source: Laws 1929, c. 35, § 3, p. 148; C.S.1929, § 19-803; R.S.1943, § 19-805; Laws 1955, c. 51, § 3, p. 172; Laws 1984, LB 837, § 2.

18-1508 Ordinances, rules, and regulations; authorized; applicability.

The legislative body of any city or village shall have power to make and enforce such ordinances, rules, and regulations as shall lawfully be made, for the control and supervision of any airport, landing field, or airdrome acquired, established, or operated by it, and for the control of aircraft and airmen, but such ordinances, rules, and regulations shall not conflict with the rules and regulations for the navigation of aircraft promulgated by the United States Government. This power shall extend to the space above the lands and waters included within the limits of such city or village, and to the space above any airport, landing field, or airdrome outside its limits.

Source: Laws 1929, c. 35, § 4, p. 149; C.S.1929, § 19-804; R.S.1943, § 19-806; Laws 1955, c. 51, § 4, p. 172.

18-1509 Lease or disposition; when authorized.

The governing body of any city or village, authorized by section 18-1501 to acquire an aviation field, shall have power to lease or dispose of the same or any portion thereof when the public need will not thereby be injured.

Source: Laws 1929, c. 35, § 5, p. 149; C.S.1929, § 19-805; R.S.1943, § 19-807; Laws 1955, c. 51, § 5, p. 172.

Municipality may lease an airport or other air navigation facility. Brasier v. Cribbett, 166 Neb. 145, 88 N.W.2d 235 (1958).

ARTICLE 16

INDUSTRIAL DEVELOPMENT

Section
18-1601. Repealed. Laws 1961, c. 285, § 1.
18-1602. Repealed. Laws 1961, c. 285, § 1.
18-1603. Repealed. Laws 1961, c. 285, § 1.
18-1604. Repealed. Laws 1961, c. 285, § 1.
18-1605. Repealed. Laws 1961, c. 285, § 1.
18-1606. Repealed. Laws 1961, c. 285, § 1.
18-1607. Repealed. Laws 1961, c. 285, § 1.
18-1608. Repealed. Laws 1961, c. 285, § 1.
18-1609. Repealed. Laws 1961, c. 285, § 1.
18-1610. Repealed. Laws 1961, c. 285, § 1.
18-1611. Repealed. Laws 1961, c. 285, § 1.
18-1612. Repealed. Laws 1961, c. 285, § 1.
18-1613. Repealed. Laws 1961, c. 285, § 1.
18-1614. Transferred to section 13-1101.
18-1615. Transferred to section 13-1102.
18-1616. Transferred to section 13-1103.
18-1617. Transferred to section 13-1104.
18-1618. Transferred to section 13-1105.
18-1619. Transferred to section 13-1106.
18-1620. Transferred to section 13-1107.
18-1621. Transferred to section 13-1108.
18-1622. Transferred to section 13-1109.
18-1623. Transferred to section 13-1110.

18-1601 Repealed. Laws 1961, c. 285, § 1.

18-1602 Repealed. Laws 1961, c. 285, § 1.

18-1603 Repealed. Laws 1961, c. 285, § 1.

18-1604 Repealed. Laws 1961, c. 285, § 1.

18-1605 Repealed. Laws 1961, c. 285, § 1.

18-1606 Repealed. Laws 1961, c. 285, § 1.

18-1607 Repealed. Laws 1961, c. 285, § 1.

18-1608 Repealed. Laws 1961, c. 285, § 1.

18-1609 Repealed. Laws 1961, c. 285, § 1.

18-1610 Repealed. Laws 1961, c. 285, § 1.

18-1611 Repealed. Laws 1961, c. 285, § 1.

18-1612 Repealed. Laws 1961, c. 285, § 1.

18-1613 Repealed. Laws 1961, c. 285, § 1.

18-1614 Transferred to section 13-1101.

18-1615 Transferred to section 13-1102.

18-1616 Transferred to section 13-1103.

18-1617 Transferred to section 13-1104.

18-1618 Transferred to section 13-1105.

18-1619 Transferred to section 13-1106.

18-1620 Transferred to section 13-1107.

18-1621 Transferred to section 13-1108.

18-1622 Transferred to section 13-1109.

18-1623 Transferred to section 13-1110.

ARTICLE 17
MISCELLANEOUS

Section

18-1701 Public records; disposition and destruction.

All cities and villages are empowered to provide for the disposition or destruction of public records when the records have been determined to be of no further legal, administrative, fiscal, or historical value by the State Records Administrator pursuant to sections 84-1201 to 84-1220; *Provided,* the provisions of this section shall not apply to the minutes of the clerk and the permanent ordinance and resolution books, or any other record classified as permanent by the State Records Administrator.

Source: Laws 1955, c. 53, § 1, p. 175; Laws 1969, c. 105, § 1, p. 480.

18-1702 Law enforcement; joint institute; trainees; costs and expenses.

Any city or village, in the State of Nebraska, is hereby authorized and empowered to pay from municipal funds the cost of training and the expenses of trainees, designated by its governing body, to attend the law enforcement institute jointly sponsored by the Police Officers Association of Nebraska and the Extension Division of the University of Nebraska and held periodically at the University of Nebraska at Lincoln, Nebraska.

Source: Laws 1957, c. 42, § 1, p. 218.

18-1703 Repealed. Laws 2000, LB 994, § 13.

18-1704 Repealed. Laws 2000, LB 994, § 13.

18-1705 Road or street improvement; avoidance of menace to travel; additional land; acquisition by purchase, gift, or eminent domain.

Whenever any city or village shall need any additional land for the purpose of avoiding a menace to travel by caving, sliding, washing, or otherwise or for the purpose of improving, maintaining, or changing any road, street, alley, or other public highway, such city or village may acquire such needed land or an easement therein by purchase, gift, or eminent domain proceedings. Such land may be so acquired regardless of whether it is contiguous or noncontiguous to such road, street, alley, or highway, or within or without the corporate limits of such city or village. In case of eminent domain proceedings, the procedure to

condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1957, c. 43, § 1, p. 219.

18-1706 Fire, police, and emergency service; provision outside limits of municipality.

Any city or village may by resolution authorize its fire or police departments or any portion thereof to provide fire, police, and emergency service outside of the limits of the municipality either within or without the state.

Source: Laws 1959, c. 55, § 1, p. 248; Laws 1959, c. 56, § 1, p. 249.

18-1707 Services, vehicles, and equipment; authority to contract for; requirements.

Any city or village shall have authority to contract with other political subdivisions, government agencies, public corporations, private persons, or groups for (1) compensation for services rendered by it or (2) the use of vehicles and equipment of the city or village. The services shall be of a type which the city or village is empowered to perform and the vehicles or equipment shall be of a type which the city or village is empowered to use, as otherwise provided by law. Any person performing the services shall have completed any training requirements of his or her profession as required by law. The compensation agreed upon shall be a legal charge and collectible by the entity rendering such services in any court of competent jurisdiction.

Source: Laws 1959, c. 55, § 2, p. 248; Laws 1984, LB 782, § 1.

18-1708 Municipal employees; serving outside corporate limits; regular line of duty.

All municipal employees serving outside the corporate limits of the municipality as authorized in sections 18-1706 to 18-1709 shall be considered and held as serving in their regular line of duties as fully as if they were serving within the corporate limits of their own municipality.

Source: Laws 1959, c. 55, § 3, p. 249; Laws 1959, c. 56, § 2, p. 250; Laws 1988, LB 369, § 3.

18-1709 Fire protection; fire apparatus; emergency vehicles; contract with other municipalities.

Each and every municipality of this state is hereby authorized and empowered to make arrangements and contracts with any other municipality for the purpose of fire protection and for the use of fire apparatus and emergency vehicles and equipment.

Source: Laws 1959, c. 55, § 4, p. 249.

18-1710 Repealed. Laws 1988, LB 369, § 4.

18-1711 Repealed. Laws 1973, LB 509, § 1.

18-1712 Fire training school; jointly sponsored; trainees; costs and expenses.

Any city or village in the State of Nebraska may pay from municipal funds the cost of training and the expenses of such members from each fire company as

designated by its governing body to attend the fire training school jointly sponsored by the Nebraska State Volunteer Firefighter's Association, the State Fire Marshal, the Nebraska Forest Service-Fire Control, a division of the University of Nebraska Institute of Agriculture and Natural Resources, and the Nebraska Emergency Management Agency and held periodically at the state fire training school.

Source: Laws 1959, c. 58, § 1, p. 251; Laws 1961, c. 53, § 5, p. 199; Laws 1963, c. 83, § 1, p. 291; Laws 1994, LB 1027, § 1; Laws 1996, LB 43, § 2.

18-1713 Fire training school; maintained by city of the primary or metropolitan class; trainees; costs and expenses.

Any city or village in the State of Nebraska shall be authorized and empowered to enter into a contract with a fire department of any primary or metropolitan city that maintains a fire training school for its own firemen, to train such firemen as it might designate and may pay from municipal funds the cost of such training and all of the expenses of such designated trainees during the time that they are undergoing such training.

Source: Laws 1959, c. 58, § 2, p. 252.

18-1714 Fire training school; approved by State Fire Marshal and Nebraska Emergency Management Agency; attendance.

Any city or village in the State of Nebraska is hereby authorized to send any person or persons designated by its governing body to attend any fire training school operating within the State of Nebraska and that has been approved as a proper fire department training school for such purposes by the State Fire Marshal and the Nebraska Emergency Management Agency.

Source: Laws 1959, c. 58, § 3, p. 252; Laws 1996, LB 43, § 3.

18-1715 Airport; park; waterworks system; sewerage system; outside corporate limits; police jurisdiction.

Any municipality in Nebraska owning, controlling, or operating an airport, park, waterworks system, sewerage system, or any portion of the same, or any other municipal facility, outside the corporate limits of such municipality, may exercise police jurisdiction over the same, and with the same force and effect as though such properties were located within the corporate limits of such municipality.

Source: Laws 1961, c. 55, § 1, p. 208.

18-1716 Suburban regulations; exceptions.

Any regulation of any municipality pertaining to any area outside of its corporate limits shall be subject to any lawful and existing regulation of another municipality pertaining to that same area except as otherwise provided by an agreement entered into pursuant to the Interlocal Cooperation Act or Joint Public Agency Act. However, any area annexed by any municipality shall be subject to the ordinances of such municipality after such annexation.

Source: Laws 1967, c. 75, § 6, p. 245; Laws 1998, LB 611, § 2; Laws 1999, LB 87, § 63.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

Zoning for counties and municipalities are governed by different statutes, and the provisions to eliminate overlapping refer to municipalities only. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

18-1716.01 Annexation; property contiguous to or abutting county road; effect.

Any city or village annexing property contiguous to or abutting upon any part of a county road shall be deemed to have annexed, without further action, all of the contiguous or abutting road at the time of such annexation, except that this section shall not apply to county roads separating counties.

Source: Laws 1977, LB 173, § 1; Laws 1993, LB 631, § 1.

18-1717 Repealed. Laws 1988, LB 809, § 1.

18-1718 Annexation; contest; limitation of action.

Any action or proceeding of any kind or nature, whether legal or equitable, which is brought to contest any annexation of property made after April 29, 1967, by any city or village, must be brought within one year from the effective date of the annexation or the same shall be forever barred. The period of time prescribed by this section for bringing an action shall not be tolled or extended by nonresidence or disability.

Source: Laws 1967, c. 82, § 2, p. 258.

18-1719 Weeds; destruction and removal within right-of-way of railroads; powers.

Any city or village may provide for the destruction and removal of specified portions of weeds and worthless vegetation within the right-of-way of all railroads within the corporate limits of any such city or village, and it may require the owner or owners of such right-of-way to destroy and remove the same therefrom. If such owner or owners fail, neglect, or refuse, after ten days' written notice to remove the same, such city or village, by its proper officers, shall destroy and remove the same or cause the same to be destroyed or removed and shall assess the cost thereof against such property; *Provided,* no city or village shall destroy or remove or otherwise treat such specified portions until after the time has passed in which the railroad company is required to destroy or remove such vegetation.

Source: Laws 1969, c. 599, § 2, p. 2454.

18-1720 Nuisances; definition; prevention; abatement.

All cities and villages in this state are hereby granted power and authority by ordinance to define, regulate, suppress and prevent nuisances, and to declare what shall constitute a nuisance, and to abate and remove the same. Every city and village is authorized to exercise such power and authority within its zoning jurisdiction.

Source: Laws 1939, c. 10, § 1, p. 77; C.S.Supp.,1941, § 19-1201; R.S. 1943, § 19-1201; Laws 1969, c. 115, § 1, p. 529.

A city of the primary class possesses authority to sue and suppress nuisances. City of Lincoln v. ABC Books, Inc., 238 Neb. 378, 470 N.W.2d 760 (1991).

18-1721 Comprehensive zoning ordinance; requirements for street dedication.

In order to lessen congestion on the streets and to facilitate adequate provisions for community utilities and facilities such as transportation, any city or village which has a comprehensive zoning ordinance is authorized to require that no building or structure shall be erected or enlarged upon any lot in any zoning district unless the half of the street adjacent to such lot has been dedicated to its comprehensive plan width. The maximum area of land required to be so dedicated shall not exceed twenty-five percent of the area of any such lot and the dedication shall not reduce such a lot below a width of fifty feet or an area of five thousand square feet. Any owner of such a lot may submit an application for a variance and the municipality shall provide a procedure for such application to prevent unreasonable hardship under the facts of each case. The authority granted herein is in addition to the authority of the municipality to require dedication of right-of-way as a condition of subdivision approval.

Source: Laws 1969, c. 99, § 1, p. 473.

A city may not require a property owner to dedicate private property for some future public purpose as a condition for receiving a building permit unless such future use is directly occasioned by the construction for which the permit is sought. In other cases, eminent domain proceedings are required and compensation must be paid. Simpson v. City of North Platte, 206 Neb. 240, 292 N.W.2d 297 (1980).

18-1722 Buildings; repair, rehabilitate, or demolish; remove; cost; special assessment; civil action.

If any owner of any building or structure fails, neglects, or refuses to comply with notice by or on behalf of any city or village to repair, rehabilitate, or demolish and remove a building or structure which is an unsafe building or structure and a public nuisance, the city or village may proceed with the work specified in the notice to the property owner. A statement of the cost of such work shall be transmitted to the governing body. The governing body may:

(1) Levy the cost as a special assessment against the lot or real estate upon which the building or structure is located. Such special assessment shall be a lien on the real estate and shall be collected in the manner provided for special assessments; or

(2) Collect the cost from the owner of the building or structure and enforce the collection by civil action in any court of competent jurisdiction.

Source: Laws 1969, c. 101, § 1, p. 476; Laws 1990, LB 964, § 1.

The notice provided an owner was not sufficient to meet due process requirements where the notice did not inform the owner of the specific allegations concerning the building's condition or what was necessary in order to repair or rehabilitate the structure. Blanchard v. City of Ralston, 4 Neb. App. 692, 549 N.W.2d 652 (1996).

18-1722.01 Property or building; unsafe or unfit for human occupancy; duties.

Whenever the governing body of a municipality of the metropolitan class has decided by resolution or a municipality of any other class has made a determination that a property is unsafe or unfit for human occupancy because of one or more violations of its minimum standard housing ordinance or has decided by resolution or other determination, whichever is applicable, that a building is unsafe because of one or more violations of its dangerous building code

ordinance, it shall be the duty of such municipality to post the property accordingly, and to file a copy of such determination or resolution in the office of the register of deeds of the county to be recorded. No fee shall be charged for such recording or for the release of such recording.

Source: Laws 1973, LB 373, § 1; Laws 1974, LB 654, § 1.

18-1723 Firefighter; police officer; presumption of death or disability; rebuttable.

Whenever any firefighter who has served a total of five years as a member of a paid fire department of any city in this state or any police officer of any city or village, including any city having a home rule charter, shall suffer death or disability as a result of hypertension or heart or respiratory defect or disease, there shall be a rebuttable presumption that such death or disability resulted from accident or other cause while in the line of duty for all purposes of Chapter 15, article 10, sections 16-1001 to 16-1042, and any firefighter's or police officer's pension plan established pursuant to any home rule charter, the Legislature specifically finding the subject of this section to be a matter of general statewide concern. Such rebuttable presumption shall apply in any action or proceeding arising out of death or disability incurred prior to December 25, 1969, and which has not been processed to final administrative or judicial conclusion prior to such date.

Source: Laws 1969, c. 281, § 1, p. 1048; Laws 1985, LB 3, § 3.

The clear import of the language of this section is that the rebuttable presumption it creates applies only for purposes of the designated pension plans and retirement systems and not to workers' compensation cases. Spangler v. State, 233 Neb. 790, 448 N.W.2d 145 (1989).

18-1724 Discrimination; employment, public accommodations, and housing; ordinance to prevent.

Notwithstanding any other law or laws heretofore enacted, all cities and villages in this state shall have the power by ordinance to define, regulate, suppress, and prevent discrimination on the basis of race, color, creed, religion, ancestry, sex, marital status, national origin, familial status as defined in section 20-311, handicap as defined in section 20-313, age, or disability in employment, public accommodation, and housing and may provide for the enforcement of such ordinances by providing appropriate penalties for the violation thereof. It shall not be an unlawful employment practice to refuse employment based on a policy of not employing both husband and wife if such policy is equally applied to both sexes.

Source: Laws 1971, LB 161, § 1; Laws 1978, LB 830, § 1; Laws 1991, LB 825, § 1.

18-1725 Repealed. Laws 1973, LB 45, § 125.

18-1726 Repealed. Laws 1973, LB 45, § 125.

18-1727 Repealed. Laws 1973, LB 45, § 125.

18-1728 Repealed. Laws 1973, LB 45, § 125.

18-1729 Violations bureau; purpose; payment of penalties.

Any incorporated city or village may, by ordinance, establish a violations bureau for the collection of penalties for nonmoving traffic violations. Such

violations shall not be subject to prosecution in the courts except when payment of the penalty is not made within the time prescribed by ordinance. When payment is not made within such time, the violations may be prosecuted in the same manner as other ordinance violations.

Source: Laws 1973, LB 226, § 33.

18-1730 Transferred to section 13-308.

18-1731 Transferred to section 13-309.

18-1732 Expiration of act.

18-1733 Expiration of act.

18-1734 Expiration of act.

18-1735 Transferred to section 13-604.

18-1735.01 Transferred to section 13-605.

18-1736 Handicapped or disabled persons; designation of parking spaces; display of permits; access aisle, defined.

(1) A city or village may designate parking spaces, including access aisles, for the exclusive use of (a) handicapped or disabled persons whose motor vehicles display the distinguishing license plates issued to handicapped or disabled persons pursuant to section 60-3,113, (b) handicapped or disabled persons whose motor vehicles display a distinguishing license plate issued to a handicapped or disabled person by another state, (c) such other handicapped or disabled persons or temporarily handicapped or disabled persons, as certified by the city or village, whose motor vehicles display the permit specified in section 18-1739, and (d) such other motor vehicles, as certified by the city or village, which display the permit specified in section 18-1739. All such permits shall be displayed by hanging the permit from the motor vehicle's rearview mirror so as to be clearly visible through the front windshield. The permit shall be displayed on the dashboard only when there is no rearview mirror.

(2) If a city or village so designates a parking space or access aisle, it shall be indicated by posting aboveground and immediately adjacent to and visible from each space or access aisle a sign as described in section 18-1737. In addition to such sign, the space or access aisle may also be indicated by blue paint on the curb or edge of the paved portion of the street adjacent to the space or access aisle.

(3) For purposes of sections 18-1736 to 18-1742, access aisle means a space adjacent to a handicapped parking space or passenger loading zone which is constructed and designed in compliance with the federal Americans with Disabilities Act of 1990 and the federal rules and regulations adopted and promulgated in response to the act, as the act and the rules and regulations existed on May 31, 2001.

Source: Laws 1977, LB 13, § 1; Laws 1979, LB 146, § 1; Laws 1980, LB 717, § 2; Laws 1984, LB 482, § 1; Laws 1987, LB 598, § 1; Laws 1995, LB 593, § 1; Laws 1996, LB 1211, § 1; Laws 1998, LB 299, § 1; Laws 2001, LB 809, § 1; Laws 2005, LB 274, § 225.

18-1737 Handicapped or disabled persons; offstreet parking facility; onstreet parking; designation; removal of unauthorized vehicle; penalty; state agency, defined.

(1) Any city or village, any state agency, and any person in lawful possession of any offstreet parking facility may designate stalls or spaces, including access aisles, in such facility owned or operated by the city, village, state agency, or person for the exclusive use of handicapped or disabled persons whose motor vehicles display the distinguishing license plates issued to such individuals pursuant to section 60-3,113, such other handicapped or disabled persons or temporarily handicapped or disabled persons, as certified by the city or village, whose motor vehicles display the permit specified in section 18-1739, and such other motor vehicles, as certified by the city or village, which display such permit. Such designation shall be made by posting aboveground and immediately adjacent to and visible from each stall or space, including access aisles, a sign which is in conformance with the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118 and the federal Americans with Disabilities Act of 1990 and the federal rules and regulations adopted and promulgated in response to the act, as the act and the rules and regulations existed on May 31, 2001.

(2) The owner or person in lawful possession of an offstreet parking facility, after notifying the police or sheriff's department, as the case may be, and any city, village, or state agency providing onstreet parking or owning, operating, or providing an offstreet parking facility may cause the removal, from a stall or space, including access aisles, designated exclusively for handicapped or disabled persons or temporarily handicapped or disabled persons or motor vehicles for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons, of any vehicle not displaying the proper permit or the distinguishing license plates specified in this section if there is posted aboveground and immediately adjacent to and visible from such stall or space, including access aisles, a sign which clearly and conspicuously states the area so designated as a tow-in zone.

(3) A person who parks a vehicle in any onstreet parking space or access aisle which has been designated exclusively for handicapped or disabled persons or temporarily handicapped or disabled persons or motor vehicles for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons, or in any so exclusively designated parking space or access aisle in any offstreet parking facility, without properly displaying the proper permit or when the handicapped or disabled person to whom or for whom, as the case may be, the license plate or permit is issued will not enter or exit the vehicle while it is parked in the designated space or access aisle shall be guilty of a handicapped parking infraction as defined in section 18-1741.01 and shall be subject to the penalties and procedures set forth in sections 18-1741.01 to 18-1741.07. The display on a motor vehicle of a distinguishing license plate or permit issued to a handicapped or disabled person by and under the duly constituted authority of another state shall constitute a full and complete defense in any action for a handicapped parking infraction as defined in section 18-1741.01. If the identity of the person who parked the vehicle in violation of this section cannot be readily determined, the owner or person in whose name the vehicle is registered shall be held prima facie responsible for such violation and shall be guilty and subject to the penalties and procedures described in this section. In the case of a privately owned offstreet parking facility, a city or

village shall not require the owner or person in lawful possession of such facility to inform the city or village of a violation of this section prior to the city or village issuing the violator a handicapped parking infraction citation.

(4) For purposes of this section and section 18-1741.01, state agency means any division, department, board, bureau, commission, or agency of the State of Nebraska created by the Constitution of Nebraska or established by act of the Legislature, including the University of Nebraska and the Nebraska state colleges, when the entity owns, leases, controls, or manages property which includes offstreet parking facilities.

Source: Laws 1977, LB 13, § 2; Laws 1979, LB 146, § 2; Laws 1980, LB 717, § 3; Laws 1987, LB 598, § 2; Laws 1991, LB 113, § 1; Laws 1992, LB 933, § 1; Laws 1993, LB 370, § 4; Laws 1993, LB 632, § 8; Laws 1995, LB 593, § 2; Laws 1996, LB 1211, § 2; Laws 1998, LB 299, § 2; Laws 2001, LB 809, § 2; Laws 2005, LB 274, § 226.

18-1738 Handicapped or disabled persons, defined; parking; permits; issuance; procedure; renewal.

(1) The clerk of any city of the primary class, first class, or second class or village shall, or the county clerk or designated county official pursuant to section 23-186 or the Department of Motor Vehicles may, take an application from a handicapped or disabled person or temporarily handicapped or disabled person or his or her parent, legal guardian, or foster parent for a permit which will entitle the holder thereof or a person driving a motor vehicle for the purpose of transporting such holder to park in those spaces or access aisles provided for by sections 18-1736 to 18-1741 when the holder of the permit will enter or exit the motor vehicle while it is parked in such spaces or access aisles. For purposes of this section, the handicapped or disabled person or temporarily handicapped or disabled person shall be considered the holder of the permit.

(2) For purposes of sections 18-1736 to 18-1741, handicapped or disabled person shall mean any individual with a severe visual or physical impairment which limits personal mobility and results in an inability to travel unassisted more than two hundred feet without the use of a wheelchair, crutch, walker, or prosthetic, orthotic, or other assistant device, any individual whose personal mobility is limited as a result of respiratory problems, any individual who has a cardiac condition to the extent that his or her functional limitations are classified in severity as being Class III or Class IV, according to standards set by the American Heart Association, and any individual who has permanently lost all or substantially all the use of one or more limbs. Temporarily handicapped or disabled person shall mean any handicapped or disabled person whose personal mobility is expected to be limited in such manner for no longer than one year.

(3) A person applying for a permit or for the renewal of a permit shall complete an application, shall provide proof of identity, and shall submit a completed medical form containing the statutory criteria for qualification and signed by a physician, a physician assistant, or an advanced practice registered nurse practicing under and in accordance with his or her certification act, certifying that the person who will be the holder meets the definition of handicapped or disabled person or temporarily handicapped or disabled person. No applicant shall be required to provide his or her social security

number. In the case of a temporarily handicapped or disabled person, the certifying physician, physician assistant, or advanced practice registered nurse shall indicate the estimated date of recovery or that the temporary handicap or disability will continue for a period of six months, whichever is less. A person may hold only one permit under this section and may hold either a permit under this section or a permit under section 18-1738.01, but not both. The Department of Motor Vehicles shall provide applications and medical forms to the clerk or designated county official. The application form shall contain information listing the legal uses of the permit and that the permit is not transferable, is to be used by the party to whom issued or for the motor vehicle for which it is issued, is not to be altered or reproduced, and is to be used only when a handicapped or disabled person or a temporarily handicapped or disabled person will enter or exit the motor vehicle while it is parked in a designated parking space or access aisle. The application form shall provide space for the applicant to sign a statement that he or she is aware of his or her rights, duties, and responsibilities with regard to the use and possession of a handicapped or disabled parking permit and the penalties provided by law for handicapped parking infractions. The application form shall also indicate that those convicted of handicapped parking infractions shall be subject to suspension of the permit for six months. A copy of the completed application form shall be given to each applicant. Before a permit is issued, the department shall enter all information required in the manner prescribed by section 18-1739. The clerk or designated county official shall submit to the department the name, address, and license number of all persons applying for a permit pursuant to this section. An application for the renewal of a permit under this section may be filed within thirty days prior to the expiration of the permit. The existing permit shall be invalid upon receipt of the new permit. Following the receipt of the application and its processing, the Department of Motor Vehicles shall deliver each individual renewed permit to the applicant in person or by first-class United States mail, postage prepaid, as circumstances permit, except that renewed permits shall not be issued sooner than ten days prior to the date of expiration.

(4) The Department of Motor Vehicles, upon receipt from the clerk or designated county official of a completed application form and completed medical form from an applicant for a handicapped parking permit under this section, shall verify that the applicant qualifies for such permit and, if so, shall issue the same by delivering the permit to the applicant in person or by first-class United States mail, postage prepaid, as circumstances permit. Upon issuing such permit, the department shall provide the basic issuing data to the clerk or designated county official of the city or county where the permitholder resides or, if different, to the clerk or designated county official who originally accepted the application.

Source: Laws 1977, LB 13, § 3; Laws 1979, LB 146, § 3; Laws 1980, LB 717, § 4; Laws 1987, LB 598, § 3; Laws 1989, LB 516, § 1; Laws 1992, LB 928, § 1; Laws 1993, LB 112, § 3; Laws 1993, LB 632, § 10; Laws 1995, LB 593, § 3; Laws 1996, LB 1211, § 3; Laws 2000, LB 1115, § 1; Laws 2001, LB 809, § 3; Laws 2005, LB 256, § 15.

18-1738.01 Handicapped or disabled persons; motor vehicle used for transportation; parking permits; issuance; procedure; renewal.

(1) The clerk of any city of the primary class, first class, or second class or village shall, or the county clerk or designated county official pursuant to section 23-186 or the Department of Motor Vehicles may, take an application from any person for a motor vehicle permit which will entitle the holder thereof or a person driving the motor vehicle for the purpose of transporting handicapped or disabled persons or temporarily handicapped or disabled persons to park in those spaces or access aisles provided for by sections 18-1736 to 18-1741 if the motor vehicle is used primarily for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons. Such parking permit shall be used only when the motor vehicle for which it was issued is being used for the transportation of a handicapped or disabled person or temporarily handicapped or disabled person and such person will enter or exit the motor vehicle while it is parked in such designated spaces or access aisles.

(2) A person applying for a permit or for the renewal of a permit pursuant to this section shall apply for a permit for each motor vehicle used for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons, shall complete such forms as are provided to the clerk or designated county official by the Department of Motor Vehicles, and shall demonstrate to the clerk or designated county official or the department that each such motor vehicle is used primarily for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons. The application form shall contain information listing the legal uses of the permit and that the permit is not transferable, is to be used by the party to whom issued or for the motor vehicle for which it is issued, is not to be altered or reproduced, and is to be used only when a handicapped or disabled person or a temporarily handicapped or disabled person will enter or exit the motor vehicle while it is parked in a designated parking space or access aisle. The application form shall provide space for the applicant to sign a statement that he or she is aware of his or her rights, duties, and responsibilities with regard to the use and possession of a handicapped or disabled parking permit and the penalties provided by law for handicapped parking infractions. The application form shall also indicate that those convicted of handicapped parking infractions shall be subject to suspension of the permit for six months. A copy of the completed application form shall be given to each applicant. No more than one such permit shall be issued for each motor vehicle. A person may hold either a permit under this section or a permit under section 18-1738, but not both. An application for the renewal of a permit under this section may be filed within thirty days prior to the expiration of the permit. The existing permit shall be invalid upon receipt of the new permit. Following the receipt of the application and its processing, the Department of Motor Vehicles shall deliver each individual renewed permit to the applicant in person or by first-class United States mail, postage prepaid, as circumstances permit, except that renewed permits shall not be issued sooner than ten days prior to the date of expiration.

(3) The department, upon receipt from the clerk or designated county official of a completed application form with necessary accompanying certifications, shall verify that the applicant qualifies for a permit under this section and, if so, shall issue the same by delivering the permit to the applicant in person or by first-class United States mail, postage prepaid, as circumstances permit. Before such permit is issued, the department shall enter all information required in the manner prescribed by section 18-1739. The clerk or designated county official

shall submit to the department the name, address, and license number of all persons applying for a permit pursuant to this section. Upon issuing such permit, the department shall provide the basic issuing data to the clerk or designated county official of the city or county where the permitholder resides or, if different, to the clerk or designated county official who originally accepted the application.

Source: Laws 1980, LB 717, § 5; Laws 1987, LB 598, § 4; Laws 1992, LB 928, § 2; Laws 1993, LB 112, § 4; Laws 1993, LB 632, § 11; Laws 1995, LB 593, § 4; Laws 1996, LB 1211, § 4; Laws 2001, LB 809, § 4.

Cross References

Department of Motor Vehicles, maintain registry of permitholders, see section 60-3,113.

18-1738.02 Handicapped or disabled persons; permit; place of application.

Any person applying for a permit pursuant to section 18-1738 or 18-1738.01 shall apply for such permit to the city clerk, village clerk, county clerk, or designated county official pursuant to section 23-186 of the city, village, or county within which the applying individual resides or to the Department of Motor Vehicles. If such person does not reside within a city or village and the county clerk or designated county official does not issue permits, the person shall make application to the city clerk or village clerk of the city or village located nearest to his or her place of residence, to the county clerk or designated county official of any neighboring county who issues such permits, or to the department. No city clerk, village clerk, county clerk, designated county official, or department employee shall accept the application for a permit pursuant to section 18-1738 or 18-1738.01 of any person making application contrary to the provisions of this section.

Source: Laws 1993, LB 632, § 9; Laws 1996, LB 1211, § 5; Laws 2001, LB 809, § 5.

18-1739 Handicapped or disabled persons; parking; permits; contents; issuance; duplicate permit.

(1) The permit to be issued pursuant to section 18-1738 or 18-1738.01 shall be constructed of a durable plastic designed to resist normal wear or fading for the term of the permit's issuance and printed so as to minimize the possibility of alteration following issuance. The permit shall be of a design, size, configuration, color, and construction and contain such information as specified in the rules and regulations adopted and promulgated by the United States Department of Transportation in the Uniform System for Parking for Persons with Disabilities, 23 C.F.R. part 1235, as such regulations existed on May 31, 2001.

(2) In addition to the requirements of subsection (1) of this section, the permit shall show the expiration date and such identifying information with regard to the handicapped or disabled person or temporarily handicapped or disabled person to whom it is issued as is necessary to the enforcement of sections 18-1736 to 18-1741.07 as determined by the Department of Motor Vehicles. The expiration date information shall be distinctively color-coded so as to identify by color the year in which the permit is due to expire.

(3) No permit shall be issued to any person or for any motor vehicle if any parking permit has been issued to such person or for such motor vehicle and

such permit has been suspended pursuant to section 18-1741. At the expiration of such suspension, a permit may be renewed in the manner provided for renewal in sections 18-1738, 18-1738.01, and 18-1740.

(4) A duplicate permit may be provided without cost if the original permit is destroyed, lost, or stolen. Such duplicate permit shall be issued in the same manner as the original permit, except that a newly completed medical form need not be provided if a completed medical form submitted at the time of the most recent application for a permit or its renewal is on file with the clerk or designated county official or the Department of Motor Vehicles. A duplicate permit shall be valid for the remainder of the period for which the original permit was issued.

Source: Laws 1977, LB 13, § 4; Laws 1979, LB 146, § 4; Laws 1980, LB 717, § 6; Laws 1984, LB 482, § 2; Laws 1987, LB 598, § 5; Laws 1989, LB 516, § 2; Laws 1992, LB 928, § 3; Laws 1995, LB 593, § 5; Laws 1996, LB 1211, § 6; Laws 2001, LB 31, § 1; Laws 2001, LB 809, § 6.

18-1740 Handicapped or disabled persons; parking; permits; period valid; renewal.

(1) Permanently issued permits for handicapped or disabled parking authorized by sections 18-1736 to 18-1741.07 issued prior to August 1, 2005, shall be valid for a period ending on September 30 of the third year after the date of issuance and shall expire on that date. Permanently issued permits issued on or after August 1, 2005, shall be valid for a period ending on the last day of the month of the applicant's birthday in the third year after issuance and shall expire on that day.

(2) All permits authorized under sections 18-1736 to 18-1741.07 for temporarily handicapped or disabled parking shall be issued for a period ending not more than six months after the date of issuance but may be renewed one time for a period not to exceed six months. For the renewal period, there shall be submitted an additional application with proof of a handicap or disability.

Source: Laws 1977, LB 13, § 5; Laws 1979, LB 146, § 5; Laws 1980, LB 717, § 7; Laws 1982, LB 928, § 5; Laws 1987, LB 598, § 6; Laws 1988, LB 833, § 1; Laws 1992, LB 928, § 4; Laws 1993, LB 632, § 12; Laws 1995, LB 593, § 6; Laws 1996, LB 1211, § 7; Laws 2001, LB 31, § 2; Laws 2001, LB 809, § 7; Laws 2005, LB 406, § 1.

18-1741 Handicapped or disabled persons; parking; permits; nontransferable; violation; suspension; punishment; fine.

Permits issued under sections 18-1736 to 18-1741 shall not be transferable and shall be used only by the party to whom issued or for the motor vehicle for which issued and only for the purpose for which it is issued. No person shall alter or reproduce in any manner a permit issued pursuant to section 18-1738 or 18-1738.01. No person shall knowingly hold more than one permit or knowingly provide false information on an application for a permit issued pursuant to such sections. No person who is not the holder of a handicapped or disabled parking permit issued to him or her as a handicapped or disabled person shall display a handicapped or disabled parking permit and park in a space or access aisle designated for the exclusive use of a handicapped or

disabled person. No person who is the holder of a handicapped or disabled parking permit issued for the use of such person when transporting a handicapped or disabled person shall display his or her handicapped or disabled parking permit and park in a space or access aisle designated for the exclusive use of a handicapped or disabled person unless a handicapped or disabled person is actually in the vehicle displaying the permit at the time it is parked, has left the vehicle while it was parked, and will return to the vehicle before it leaves the designated space or access aisle. No person who is not the holder of a handicapped or disabled parking permit issued for use when a vehicle is transporting a handicapped or disabled person shall display a handicapped or disabled parking permit and park in a space or access aisle designated for the exclusive use of a handicapped or disabled person unless a handicapped or disabled person is actually in the vehicle displaying the permit at the time it is parked, has left the vehicle while it was parked, and will return to the vehicle before it leaves the designated space or access aisle. Any violation of this section shall constitute a handicapped parking infraction and shall be cause for suspension of such permit for a period of six months and such other punishment as may be provided by local ordinance. In addition, the trial court shall impose a fine of not more than two hundred fifty dollars which may be waived by the court if, at the time of sentencing, all handicapped parking permits issued to or in the possession of the offender are returned to the court. At the expiration of such six-month period, a suspended permit may be renewed in the manner provided for renewal in sections 18-1738, 18-1738.01, and 18-1740.

Source: Laws 1977, LB 13, § 6; Laws 1979, LB 146, § 6; Laws 1980, LB 717, § 8; Laws 1995, LB 593, § 7; Laws 1996, LB 1211, § 8; Laws 2001, LB 31, § 3; Laws 2001, LB 809, § 8.

18-1741.01 Handicapped parking infraction, defined; citation issuance; enforcement on state property.

(1) For purposes of sections 18-1741.01 to 18-1741.07, handicapped parking infraction means the violation of any statute or ordinance regulating (a) the use of parking spaces, including access aisles, designated for use by handicapped or disabled persons, (b) the unauthorized possession, use, or display of handicapped or disabled parking permits, or (c) the obstruction of any wheelchair ramps constructed or created in accordance and in conformity with the federal Americans with Disabilities Act of 1990, as the act existed on May 31, 2001.

(2) For any offense classified as a handicapped parking infraction, a handicapped parking citation may be issued by any peace officer or by any person designated by ordinance or resolution approved by a governing board of a county, city, or village to exercise the authority to issue a citation for any handicapped parking infraction. Such authorization shall be carried out in the manner specified in sections 18-1741.03 and 18-1741.04.

(3) A state agency as defined in section 18-1737 which owns, leases, controls, or manages state property on which public parking is allowed may enter into an agreement with the governing board of the county, city, or village in which the state property or any portion of it is located to allow the political subdivision to enforce sections 18-1736 to 18-1741.07 on such state property.

Source: Laws 1993, LB 632, § 1; Laws 1995, LB 593, § 8; Laws 1996, LB 1211, § 9; Laws 1998, LB 299, § 3; Laws 2001, LB 809, § 9.

18-1741.02 Handicapped parking infraction; penalties.

Any person found guilty of a handicapped parking infraction shall be fined (1) not more than one hundred dollars for the first offense, (2) not more than two hundred dollars for a second offense within a one-year period, and (3) not more than three hundred dollars for a third or subsequent offense within a one-year period.

Source: Laws 1993, LB 632, § 2.

18-1741.03 Handicapped parking infraction; citation form; Supreme Court; powers.

To insure uniformity, the Supreme Court may prescribe the form of the handicapped parking citation to be used for handicapped parking infractions. The handicapped parking citation shall include a description of the handicapped parking infraction, the time and place at which the person cited is to appear, a warning that failure to appear in accordance with the command of the citation is a punishable offense, and such other matter as the Supreme Court deems appropriate, but shall not include a place for the cited person's social security number. The handicapped parking citation shall provide space for an affidavit by a peace officer certifying that the recipient of the citation is the lawful possessor in his or her own right of a handicapped or disabled parking permit issued under the provisions of section 18-1738 or 18-1738.01 and that the peace officer has personally viewed the permit. The Supreme Court may provide that a copy of the handicapped parking citation constitutes the complaint filed in the trial court.

Source: Laws 1993, LB 632, § 3; Laws 1996, LB 1211, § 10; Laws 2002, LB 82, § 2.

18-1741.04 Handicapped parking citation; requirements; procedure; waivers; dismissal; credit card; payment authorized.

When a handicapped parking citation is issued for a handicapped parking infraction, the person issuing the handicapped parking citation shall enter thereon all required information, including the name and address of the cited person or, if not known, the license number and description of the offending motor vehicle, the offense charged, and the time and place the person cited is to appear in court. Unless the person cited requests an earlier date, the time of appearance shall be at least three days after the issuance of the handicapped parking citation. One copy of the handicapped parking citation shall be delivered to the person cited or attached to the offending motor vehicle. At least twenty-four hours before the time set for the appearance of the cited person, either the prosecuting attorney or other person authorized by law to issue a complaint for the particular offense shall issue and file a complaint charging such person with a handicapped parking infraction or such person shall be released from the obligation to appear as specified. A person cited for a handicapped parking violation may waive his or her right to trial. For any handicapped parking citation issued for a handicapped parking infraction by reason of the failure of a vehicle to display a handicapped parking permit issued pursuant to section 18-1738 or 18-1738.01, the complaint shall be dismissed if, within seven business days after the date of issuance of the citation, the person cited files with the court the affidavit provided for in section 18-1741.03, signed by a peace officer certifying that the recipient is the

lawful possessor in his or her own right of a handicapped parking permit issued under section 18-1738 or 18-1738.01 and that the peace officer has personally viewed the permit. The Supreme Court may prescribe uniform rules for such waivers. Anyone may use a credit card authorized by the court in which the person is cited as a means of payment of his or her fine and costs.

Source: Laws 1993, LB 632, § 4; Laws 1996, LB 1211, § 11.

18-1741.05 Handicapped parking citation; violation; penalty.

Any person failing to appear or otherwise comply with the command of a handicapped parking citation for a handicapped parking infraction shall be guilty of a Class III misdemeanor.

Source: Laws 1993, LB 632, § 5.

18-1741.06 Handicapped parking infraction; trial; rights.

The trial of any person for a handicapped parking infraction shall be by the court without a jury. All other rights provided by the Constitution of the United States made applicable to the states by the Fourteenth Amendment to the Constitution of the United States and the Constitution of Nebraska shall apply to persons charged with a handicapped parking infraction.

Source: Laws 1993, LB 632, § 6.

18-1741.07 Handicapped parking infractions; sections, how construed.

Sections 18-1741.01 to 18-1741.07 shall not be construed to affect the rights, lawful procedures, or responsibilities of peace officers or law enforcement agencies using the handicapped parking citation for handicapped parking infractions.

Source: Laws 1993, LB 632, § 7.

18-1742 Handicapped parking; rules and regulations.

The Department of Motor Vehicles shall adopt and promulgate rules and regulations necessary to fulfill any duties and obligations as provided in sections 18-1736 to 18-1741.07.

Source: Laws 1995, LB 593, § 9.

18-1743 Building permit; duplicate; issued to county assessor; when.

Any city or village which requires that a building permit be issued for the erection, alteration, or repair of any building within its jurisdiction shall, if the improvement is two thousand five hundred dollars or more, issue a duplicate of such permit to the county assessor.

Source: Laws 1979, LB 47, § 1; Laws 2003, LB 292, § 1.

18-1744 Repealed. Laws 1991, LB 825, § 53.

18-1745 Repealed. Laws 1991, LB 825, § 53.

18-1746 Repealed. Laws 1991, LB 825, § 53.

18-1747 Repealed. Laws 1991, LB 825, § 53.

18-1748 Sewer connection line; driveway approach; owner; duty to maintain; notice; assessment for cost.

Any city or village may require the owner of any property which is within such city or village and connected to the public sewers or drains to repair or replace any connection line which serves the owner's property and is broken, clogged, or otherwise in need of repair or replacement. The property owner's duty to repair or replace such a connection line shall include those portions upon the owner's property and those portions upon public property or easements up to and including the point of junction with the public main.

Any city or village may require the owner of property served by a driveway approach constructed or maintained upon the street right-of-way to repair or replace any such driveway approach which is cracked, broken, or otherwise deteriorated to the extent that it is causing or is likely to cause damage to or interfere with any street structure including pavement or sidewalks.

The city or village shall give the property owner notice by registered letter or certified mail, directed to the last-known address of such owner or the agent of such owner, directing the repair or replacement of such connection line or driveway approach. If within thirty days of mailing such notice the property owner fails or neglects to cause such repairs or replacements to be made, the city or village may cause such work to be done and assess the cost upon the property served by such connection or approach.

Source: Laws 1984, LB 992, § 2.

18-1749 Pension or retirement plan; employee contribution authorized; manner of payment.

Any city or village of this state may pick up the employee contributions required by a pension or retirement plan for all compensation paid on or after January 1, 1986, and the contributions so picked up shall be treated as employer contributions in determining the federal tax treatment under the Internal Revenue Code, except that the city or village shall continue to withhold federal income taxes based upon such contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the Internal Revenue Code, such contributions shall not be included as gross income of the employee until such time as they are distributed or made available. The city or village shall pay the employee contributions from the same source of funds which is used in paying earnings to the employees. The city or village shall pick up the contributions by a salary deduction either through a reduction in the cash salary of the employee or a combination of a reduction in salary and offset against a future salary increase. Employee contributions picked up shall be treated in the same manner and to the same extent as employee contributions made prior to the date picked up.

Source: Laws 1985, LB 353, § 4; Laws 1995, LB 574, § 26.

18-1750 Notes for anticipated receipts; issuance; payment; loans from federal government.

(1) Municipalities may issue notes up to seventy percent of the unexpended balance of total anticipated receipts for the current year and the following year. Total anticipated receipts for the current year and the following year shall

mean a sum equal to the anticipated receipts from the current existing total levy multiplied by two.

Municipalities may execute and deliver in evidence thereof their promissory notes, which they are hereby authorized and empowered to make and negotiate, bearing a rate of interest set by the city council or village board and maturing not more than two years from the date thereof. Such notes, before they are negotiated, shall be presented to the treasurer of the municipality and registered by him or her and shall be payable out of the funds collected by such municipality in the order of their registration after the payment of prior registered warrants, but prior to the payment of any warrant subsequently registered, except that if both warrants and notes are registered, the total of such registered notes and warrants shall not exceed one hundred percent of the unexpended balance of the total anticipated receipts of such municipality for the current year and the following year. For the purpose of making such calculation, such total anticipated receipts shall not include any anticipated receipts against which the municipality has issued notes pursuant to this section in either the current or the immediately preceding year.

(2) In addition to the provisions of subsection (1) of this section, municipalities may accept interest-free or low-interest loans from the federal government and may execute and deliver in evidence thereof their promissory notes maturing not more than twenty years from the date of execution.

Source: Laws 1986, LB 1027, § 191.

18-1751 Special improvement district; authorized; when.

All cities and villages may create a special improvement district for the purpose of replacing, reconstructing, or repairing an existing street, alley, water line, sewer line, or any other such improvement. Except as provided in sections 19-2428 to 19-2431, the city council or board of trustees shall have power to assess, to the extent of such special benefits, the costs of such improvements upon the properties found especially benefited thereby, whether or not such properties were previously assessed for the same general purpose. In creating such special improvement district, the city council or board of trustees shall follow procedures applicable to the creation and assessment of the same type of improvement district as otherwise provided by law.

Source: Laws 1987, LB 721, § 1.

18-1752 Removal of garbage or refuse; authorized; procedure; costs.

(1) Any city or village may provide for the collection and removal of garbage or refuse found upon any lot or land within its corporate limits or zoning jurisdiction or upon the streets, roads, or alleys abutting such lot or land which constitutes a public nuisance. The city or village may require the owner, duly authorized agent, or tenant of such lot or land to remove the garbage or refuse from such lot or land and streets, roads, or alleys.

(2) Notice that removal of garbage or refuse is necessary shall be given to each owner or owner's duly authorized agent and to the tenant if any. Such notice shall be provided by personal service or by certified mail. After providing such notice, the city or village through its proper offices shall, in addition to other proper remedies, remove the garbage or refuse, or cause it to be removed, from such lot or land and streets, roads, or alleys.

(3) If the mayor or city manager of such city or chairperson of such village declares that the accumulation of such garbage or refuse upon any lot or land constitutes an immediate nuisance and hazard to public health and safety, the city or village shall remove the garbage or refuse, or cause it to be removed, from such lot or land within forty-eight hours after notice by personal service or following receipt of a certified letter in accordance with subsection (2) of this section if such garbage or refuse has not been removed.

(4) Whenever any city or village removes any garbage or refuse, or causes it to be removed, from any lot or land pursuant to this section, it shall, after a hearing conducted by its governing board, assess the cost of the removal against such lot or land.

Source: Laws 1988, LB 934, § 1.

18-1752.01 Solid waste collection service; commencement; resolution; requirements.

Any municipality which intends to provide or expand municipal solid waste collection service in an area where the collection of solid waste has been provided by a private entity for a minimum of ninety days shall, by resolution, proclaim its intent to begin municipal solid waste collection in the area, whether by the use of municipal employees and equipment or by contract. The resolution shall be made by a vote of the governing body at a public meeting.

Source: Laws 1995, LB 629, § 1.

18-1752.02 Solid waste collection service; commencement; limitation.

A municipality shall not commence municipal solid waste collection in an area described in section 18-1752.01 for one year after the date of the resolution of intent to serve the area unless (1) the municipality contracts with the private entity currently providing the service to continue the service for the same one-year period of time, (2) the municipality provides for the service through property taxes or other general funds in whole or in part, (3) the private entity currently providing such service discontinues the service to the area, or (4) the private entity currently providing such service fails to provide such service under the same terms and conditions which the municipality provides to residents of the municipality through the municipal solid waste collection service.

Source: Laws 1995, LB 629, § 2.

18-1753 Annexation; additional population; report to Tax Commissioner; calculations.

(1) Any city or village annexing territory which thereby adds additional population to the city or village shall report such annexation to the Tax Commissioner. The annexing city or village shall provide the Tax Commissioner with a copy of the ordinance annexing the territory and specify the effective date of the annexation. The annexing city or village shall provide its calculation of the number of additional residents added to the population of the city or village by reason of the annexation and the new combined total population of the city or village and shall inform the Tax Commissioner of the source and date of the federal census relied upon in the calculations.

(2)(a) All calculations of additional population shall be based upon federal census figures from the most recent federal decennial census or the most recent federal census update or recount certified by the United States Bureau of the Census.

(b) If the boundaries of the territory annexed and those of federal census enumeration districts are the same, or if federal census enumeration districts are wholly contained within the boundaries of the area annexed, the most recent federal census figures for such enumeration districts shall be added directly to the population of the city or village.

(c) If the federal census enumeration districts are partly within and partly without the boundaries of the territory annexed, the federal census figures for such enumeration districts shall be adjusted by reasonable interpretation and supplemented by other evidence to arrive at a figure for the number of people residing in the area annexed as such population existed in that area at the time of the most recent federal census. Reasonable interpretation shall include, but not be limited to, the following methods: An actual house count of the annexed territory multiplied by the average number of persons per household as this information existed at the time of the most recent federal census; or multiplying the population that existed at the time of the most recent federal census in the enumeration district by a ratio of the actual current population of the enumeration district divided in the same manner as the annexation.

(d) The population of the city or village following annexation shall be (i) the population of the city or village as reported by the most recent federal census or (ii) the population of the city or village as reported by the most recent federal census plus the population of the territory annexed as calculated in subdivisions (b) and (c) of this subsection.

Source: Laws 1993, LB 726, § 1; Laws 1994, LB 1127, § 2.

18-1754 Annexation report; Tax Commissioner; duties.

The Tax Commissioner shall review the report of the annexing city or village and its calculations as to the new population of the city or village as the result of the annexation. He or she shall determine if the methodology employed in determining such calculations has been made in conformity with section 18-1753 and shall, within sixty days of his or her receipt of a complete report from the annexing city or village, certify the total new population of the city or village following the annexation. The Tax Commissioner shall adopt and promulgate rules and regulations to carry out this section and section 18-1753.

Source: Laws 1993, LB 726, § 2; Laws 1994, LB 1127, § 3.

18-1755 Acquisition of real property; procedure; public right of access for recreational use.

A city of the metropolitan, primary, first, or second class or village acquiring an interest in real property by purchase or eminent domain shall do so only after the governing body has authorized the acquisition by action taken in a public meeting after notice and public hearing. The city or village shall provide to the public a right of access for recreational use to the real property acquired for public recreational purposes. Such access shall be at designated access points and shall be equal to the right of access for recreational use held by adjacent landowners. The right of access granted to the public for recreational

use shall meet or exceed such right held by a private landowner adjacent to the real property.

Source: Laws 1994, LB 188, § 3; Laws 1994, LB 441, § 1; Laws 2006, LB 1113, § 18.

18-1756 Purchase of personal property without bidding; when.

(1) Notwithstanding any other provisions of law or a home rule charter, a city or village which has established, by an interlocal agreement with any county, a joint purchasing division or agency may purchase personal property without competitive bidding if the price for the property has been established by the federal General Services Administration or the materiel division of the Department of Administrative Services.

(2) For purposes of this section:

(a) Personal property includes, but is not limited to, supplies, materials, and equipment used by or furnished to any officer, office, department, institution, board, or other agency; and

(b) Purchasing or purchase means the obtaining of personal property by sale, lease, or other contractual means.

Source: Laws 1997, LB 315, § 1.

18-1757 Issuance of citations for violations; procedure.

(1) The chief or head official of the fire department, fire inspectors as may be designated by such chief or head official, or inspectors charged with the enforcement of fire, health, or safety codes and constructional technical codes of a city of the first class, city of the primary class, or city of the metropolitan class shall have the authority, after being trained by a certified law enforcement officer in the policies and procedures for issuance of citations, to issue citations for violations of fire, health, and safety codes and constructional technical codes (a) that constitute infractions or violations of city ordinances, (b) that are violations of the fire, health, or safety code or constructional technical code that the official or inspector issuing the citation is charged with enforcing, and (c) in which the circumstances do not pose a danger to the official or inspector.

(2) If a city of the second class or village has adopted and is enforcing a fire, health, safety, or constructional technical code, the chief or head official of the fire department, fire inspectors designated by such chief or head official, or such inspectors charged with the enforcement of the fire, health, safety, or constructional technical code shall have the authority, after being trained by a certified law enforcement officer in the policies and procedures for issuance of citations, to issue citations for violations of fire, health, safety, or constructional technical codes (a) that constitute infractions or violations of city or village ordinances, (b) that are violations of the fire, health, safety, or constructional technical code that the official or inspector issuing the citation is charged with enforcing, and (c) where the circumstances do not pose a danger to the official or inspector.

(3) A citation issued under this section shall be equivalent to and have the same legal effect as a citation issued in lieu of arrest or continued custody by a peace officer if the citation and procedures utilized meet the requirements of sections 29-422 to 29-429. The citation shall be on the same form prescribed under section 29-423. Failure to appear or comply with a citation issued under

this section shall be punishable in the same manner as provided in section 29-426. An official or inspector issuing a citation under this section shall not have authority to take a person into custody or detain a person under this section or section 29-427.

Source: Laws 1998, LB 109, § 1; R.S.Supp.,2004, § 19-4801; Laws 2006, LB 1175, § 3.

ARTICLE 18

BONDS

Section
18-1801. Various purpose bonds; power to issue.
18-1802. Various purpose bonds; terms; payment.
18-1803. Revenue bonds; purpose; issuance; terms, defined.
18-1804. Revenue bonds; general provisions; enumerated.
18-1805. Revenue bonds issued prior to October 23, 1967; sections, how construed.

18-1801 Various purpose bonds; power to issue.

Whenever any city or village is authorized to issue bonds that would constitute a general obligation of the city or village and the city or village has taken all preliminary steps required for the issuance of two or more issuances of such bonds, except the enactment of an ordinance or resolution prescribing the form thereof, the city or village may combine all such proposed bonds into a single issue in the total amount of the aggregate of the proposed separate issues and issue and sell such bonds at not less than par. The bonds shall be known as Various Purpose Bonds of the City (or Village) of ..... .

Source: Laws 1961, c. 56, § 1, p. 209.

18-1802 Various purpose bonds; terms; payment.

The various purpose bonds shall be authorized by an ordinance enacted by a majority vote of the governing body of the city or village. The ordinance shall state the various proposed bonds and the amount of each proposed issue which have been combined in the various purpose bonds. The various purpose bonds may mature and bear interest as the governing body may determine but the amount of each proposed separate issue included therein shall mature and bear interest within the maturity and interest limitations which would be applicable to such separate issue as if it were issued independently. The proceeds received from the sale of such bonds shall be allocated and applied to the same purposes as the proceeds of the separate bond issues would have been applied if issued. All money collected from special assessments or other special funds which might have been applied on the payment of any bonds if issued separately shall be kept in a special account and used to pay the principal and interest on the various purpose bonds of the city or village.

Source: Laws 1961, c. 56, § 2, p. 209; Laws 1972, LB 885, § 1.

18-1803 Revenue bonds; purpose; issuance; terms, defined.

Any city or village shall have the power to issue revenue bonds for the purpose of acquiring, constructing, reconstructing, improving, extending, equipping, or furnishing any revenue-producing facility within or without its corporate limits that the municipality has power to acquire, construct, reconstruct, extend, equip, improve, or operate and for any purpose necessary or

incidental to any of the foregoing and for the purpose of refunding any such bonds and for the purpose of refunding general obligation bonds of the city or village issued to construct part or all of such revenue-producing facilities including refunding any general obligation bonds which may have been issued to refund any bonds issued to construct part or all of such revenue-producing facilities. Cities of the primary class may also issue revenue bonds for any public purpose in connection with or related to any such revenue-producing facility. For the purposes of sections 18-1803 to 18-1805, bonds shall mean and include bonds, notes, warrants, or debentures, including notes issued pending permanent revenue bond financing. For the purposes of sections 18-1803 to 18-1805, facility shall mean and include, but not be limited to, all or part of a revenue-producing undertaking, such as a health care facility, waterworks plant, water system, sanitary sewer system, sewage disposal plant, gas plant, electric light and power plant, electric distribution system, or airport facility, including an ownership interest in any such undertaking, or any combination of two or more such undertakings or an interest or interests therein.

Source: Laws 1967, c. 80, § 1, p. 254; Laws 1976, LB 825, § 6; Laws 2005, LB 169, § 1.

18-1804 Revenue bonds; general provisions; enumerated.

General provisions relating to the form, sale, issuance, and other matters concerning revenue bonds shall be as follows:

(1) The form, denominations, and other features of such bond issues shall be as prescribed by the governing body in the ordinance authorizing the issuance of such bonds. The official designated shall be responsible for the sale and issuance of such bonds, for their delivery, for promptly and properly depositing the proceeds therefrom, and for other ministerial acts relating to bonds;

(2) Revenue bonds shall be issued for such terms as the ordinance authorizing them shall prescribe but shall not mature later than fifty years after the date of issuance thereof and may be issued with or without an option of redemption as shall be determined by the governing body;

(3) Revenue bonds shall be sold for such price, bear interest at such rate or rates, and be payable as to principal and interest at such time or times and at such place or places within or without the state as shall be determined by the governing body;

(4) Any ordinance authorizing revenue bonds may contain such covenants and provisions to protect and safeguard the security of the holders of such bonds as shall be deemed necessary to assure the prompt payment of the principal thereof and the interest thereon. Such covenants and provisions may establish or provide for, but shall not be limited to, the payment of interest on such bonds from the proceeds thereof for such period as the governing body deems advisable, the creation of reserve funds from bond proceeds, revenue of the facility for or with respect to which the bonds were issued or other available money, the creation of trust funds, and the appointment of trustees for the purpose of receiving and disbursing bond proceeds or the collection and disbursement of revenue from the facility for or with respect to which the bonds were issued; the limitations or conditions upon the issuance of additional bonds payable from the revenue of the facility for or with respect to which the bonds were issued; the operation, maintenance, management, accounting and auditing procedures to be followed in the operation of the facility; and the

conditions under which any trustee or bondholders committee shall be entitled to the appointment of a receiver to take possession of the facility, to manage it, and receive and apply revenue from the facility;

(5) The provisions of this section and any ordinances authorizing the issuance of revenue bonds pursuant to this section shall constitute a contract of the municipality with every holder of such bonds and shall be enforceable by any bondholder by mandamus or other appropriate action at law or in equity in any court of competent jurisdiction;

(6) Bonds issued pursuant to this section shall not be a debt of the municipality within the meaning of any constitutional, statutory, or charter limitation upon the creation of general obligation indebtedness of the municipality, and the municipality shall not be liable for the payment thereof out of any money of the municipality other than the revenue pledged to the payment thereof, and all bonds issued pursuant to this section shall contain a recital to that effect. The holders of all revenue bonds shall have a lien on the revenue of the facility for or with respect to which they are issued subject to conditions provided in the ordinance authorizing the issuance of such bonds;

(7) Whenever the governing body shall have issued any revenue bonds, it shall establish, maintain, revise and collect charges and rates throughout the life of the bonds at least sufficient to provide for all costs associated with the ownership, operation, maintenance, renewal and replacement of the facility for or with respect to which the bonds were issued, the payment of the principal and interest on all indebtedness incurred with respect thereto and to provide adequate reserves therefor, to maintain such coverage for the payment of such indebtedness as the governing body may deem advisable, to maintain such other reserves as provided in the ordinances authorizing the issuance of such bonds and to carry out the provisions of such ordinances; and

(8) Such bonds shall be signed by the mayor and countersigned by the official designated. Signatures upon such bonds and coupons shall be in such form as the governing body may prescribe in the bond ordinance concerned. At least one manual signature shall be affixed to each bond, but other required signatures may be affixed as facsimile signatures. The use on bonds and coupons of a printed facsimile of the municipal seal is also authorized.

Source: Laws 1967, c. 80, § 2, p. 254; Laws 1969, c. 51, § 68, p. 314; Laws 1976, LB 825, § 7.

18-1805 Revenue bonds issued prior to October 23, 1967; sections, how construed.

The provisions of sections 18-1803 to 18-1805 shall not in any way govern, impair, or restrict the issuance of revenue bonds authorized by the municipality prior to October 23, 1967.

The provisions of sections 18-1803 to 18-1805 shall be independent of and in addition to any other provisions of the laws of the State of Nebraska or provisions of home rule charters, and revenue bonds may be issued under the provisions of sections 18-1803 to 18-1805 for any purpose authorized in such sections even though other provisions of the laws of the State of Nebraska or provisions of home rule charters may provide for the issuance of revenue bonds for the same or similar purposes. The provisions of sections 18-1803 to 18-1805 shall not be considered amendatory of or limited by any other provisions of the laws of the State of Nebraska or provisions of home rule charters, and revenue

bonds may be issued under the provisions of sections 18-1803 to 18-1805 without complying with the restrictions or requirements of any other provisions of the laws of the State of Nebraska, except when specifically required by sections 18-1803 to 18-1805, or without complying with the restrictions or requirements of home rule charters. Nothing in sections 18-1803 to 18-1805 shall prohibit or limit the issuance of revenue bonds in accordance with the provisions of other applicable laws of the State of Nebraska or of home rule charters if the governing body shall determine to issue such revenue bonds under such other laws or charter or otherwise limit the provisions of any home rule charter.

Source: Laws 1967, c. 80, § 3, p. 256; Laws 1976, LB 825, § 8; Laws 2001, LB 420, § 19.

ARTICLE 19

PLUMBING INSPECTION

Section

18-1901 Board for examination of plumbers; members; appointment; qualifications; terms; quorum; organization; vacancies; how filled; bond; duties.

(1) In cities of the metropolitan class there shall be a board for the examination of plumbers of eight members. The board shall consist of an architect licensed to practice in the State of Nebraska and engaged in business in a city of the metropolitan class, a mechanical engineer licensed to practice in the State of Nebraska and engaged in business in a city of the metropolitan class, two journeymen plumbers, two master plumbers, one member of the general public who is not associated with the plumbing business, and a chief health officer who shall serve as a nonvoting member of the board. Such members shall be appointed by the mayor by and with the consent of the city council. A member shall continue to serve until his or her successor has been appointed and qualified.

(2) In cities of the primary class there may be a board for the examination of plumbers consisting of five members. The board shall consist of the Director of

Building and Safety of the city, a registered professional mechanical engineer licensed to practice in the State of Nebraska and engaged in business in the city, the chief plumbing inspector for the city, one master plumber, and one journeyman plumber. The mechanical engineer, the master plumber, and the journeyman plumber shall be appointed by the mayor by and with the consent of the city council or, in cities having a city manager, by the city manager.

(3) In all cities of the first and second classes and villages there may be a board for the examination of plumbers of not less than four members, consisting of at least one member to be known as the chief health officer of the city or village, one member to be known as the plumbing inspector of the city or village, one journeyman plumber, and one master plumber. The journeyman and master plumbers shall be appointed by the mayor by and with the consent of the city council, by the chairperson by and with the consent of the board of trustees, or, in cities having a city manager, by the city manager.

(4) For purposes of this section, in cities where a city-county health department has been established and is maintained as provided in section 71-1628, chief health officer shall mean the health director of such department.

(5) Except for cities of the metropolitan and primary classes and as provided in subsection (4) of this section, the chief health officer and plumbing inspector shall be appointed by and hold office during the term of office of the mayor, city manager, or chairperson of the board of trustees, as the case may be. The terms of office of the journeymen and master plumbers shall be for three years. Upon expiration of the term of each appointed member, appointments shall be made for succeeding terms by the same process as the previous appointments.

(6) The plumbing inspector and journeymen and master plumbers shall be licensed plumbers. The plumbers appointed to the board in cities of the metropolitan class shall be licensed within such cities. The chief plumbing inspector shall be licensed within such city or village and shall act in a direct advisory capacity to the plumbing board.

(7) In cities of the metropolitan class, four voting members of the board shall constitute a quorum, and in all other cities and villages, three members of the plumbing board shall constitute a quorum. The board shall organize by selecting a chairperson, and in cities of the metropolitan class a recording secretary shall be furnished to such board. The city or village shall make available to the board a location for the board to meet and conduct business at a time convenient for the members of the board. All vacancies in the board may be filled by the mayor and council, city manager, or chairperson and board of trustees as provided in this section. Any member of the board may be removed from office for cause by the district court of the county in which such city or village is situated. The governing body of the city or village may require that each member of the board give bond in the sum of one thousand dollars, conditioned according to law, the cost of which may be paid by such city or village.

(8) The plumbing board in a city of the metropolitan class shall maintain a record of all complaints filed in the city regarding violations of the plumbing code and a record of the disposition of each such complaint.

(9) If two or more municipalities organize a joint plumbing board pursuant to the Interlocal Cooperation Act, appointments shall be made according to the agreements providing for such joint board and the members of such board shall

be residents of such cities or villages or live within the zoning jurisdiction of such cities or villages.

Source: Laws 1901, c. 21, § 1, p. 321; R.S.1913, § 5274; C.S.1922, § 4497; C.S.1929, § 19-301; R.S.1943, § 19-301; Laws 1961, c. 57, § 1, p. 210; Laws 1973, LB 103, § 1; Laws 1975, LB 153, § 1; Laws 1989, LB 53, § 1; Laws 1990, LB 1221, § 1; Laws 1995, LB 36, § 1; Laws 1997, LB 666, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.

18-1902 Board; organization; records.

The persons who compose the plumbing board shall, within ten days after their appointments, meet in their respective city or village building or place designated by the city council, city manager, or chairman and board of trustees, and organize by the selection of one of their number as chairman; and the plumbing inspector shall be the secretary of said board. It shall be the duty of the secretary to keep full, true and correct minutes and records of all licenses issued by it, together with their kinds and dates, and the names of the persons to whom issued, in books to be provided by such city or village for that purpose, which books and records shall be open for free inspection by all persons during business hours.

Source: Laws 1901, c. 21, § 2, p. 322; R.S.1913, § 5275; C.S.1922, § 4498; C.S.1929, § 19-302; R.S.1943, § 19-302; Laws 1961, c. 57, § 2, p. 211.

18-1903 Board; appointments; when made; ex officio members; compensation.

The appointment of the plumbing board shall be made annually, at the first meeting of the city council or chairperson and board of trustees, or by the city manager, in August of each year, except as provided in section 18-1901. If the city or village has a chief health officer or health director and plumbing inspector, then they shall act as members of such board ex officio and shall receive no extra compensation, except that boards of cities of the primary class shall have members as provided in subsection (2) of section 18-1901. If there are no such officers in such city or village, then, on being appointed, they shall each receive as a salary an amount to be determined by the city council or chairperson and board of trustees.

Source: Laws 1901, c. 21, § 12, p. 325; R.S.1943, § 5276; C.S.1922, § 4499; C.S.1929, § 19-303; R.S.1943, § 19-303; Laws 1955, c. 54, § 1, p. 176; Laws 1961, c. 57, § 3, p. 211; Laws 1973, LB 103, § 2; Laws 1995, LB 36, § 2.

18-1904 Board; meetings; examination for license; rules.

The plumbing board shall fix stated times and places of meeting, which times shall not be less than once in every two weeks and meetings may be held more often upon written call of the chairman of the board. The board shall adopt rules for the examination, at such times and places, of all persons who desire a license to work at the construction or repairing of plumbing within the city or

village, and also within the area of the zoning jurisdiction outside the corporate limits of cities of the metropolitan class.

Source: Laws 1901, c. 21, § 4, p. 323; R.S.1913, § 5277; C.S.1922, § 4500; C.S.1929, § 19-304; R.S.1943, § 19-304; Laws 1961, c. 57, § 4, p. 212; Laws 1965, c. 76, § 1, p. 310.

18-1905 Assistant inspector; board members; compensation; meetings, restriction.

The assistant inspectors shall receive a salary in an amount to be determined by the city council or chairman and board of trustees. The members of the board, not ex officio members, shall be paid an amount to be determined by the city council or chairman and board of trustees. No meeting of the board shall be held at any time, except on the call of the chairman of such board. All salaries shall be paid out of the general fund of the city or village, where the board is located, the same as other city or village officers are paid. Vouchers for the same shall be duly certified by the chairman and secretary of such board to the city council, city manager, or chairman and board of trustees.

Source: Laws 1901, c. 21, § 13, p. 325; R.S.1913, § 5278; C.S.1922, § 4501; C.S.1929, § 19-305; R.S.1943, § 19-305; Laws 1955, c. 54, § 2, p. 176; Laws 1961, c. 57, § 5, p. 212; Laws 1973, LB 103, § 3.

18-1906 Construction, alteration, and inspection; rules and regulations; powers of board; variances; fee; plans and specifications; approval; Building Board of Review; appeals.

The plumbing board shall have power, and it shall be its duty, to adopt rules and regulations, not inconsistent with the laws of the state or the ordinances of the city or village, for the sanitary construction, alteration, and inspection of plumbing and sewerage connections and drains placed in, or in connection with, any and every building in such city or village, in which it will prescribe the kind and size of materials to be used in such plumbing and the manner in which such work shall be done, which rules and regulations, except such as are adopted for its own convenience only, shall be approved by ordinance by the mayor and council of such city or by the chairperson and board of trustees of such village. The board shall have the power to amend or repeal its rules and regulations, subject, except such as relate to its own convenience only, to the approval of the mayor and council of such city or chairperson and board of trustees of such village. In cities of the metropolitan class the plumbing board shall have the power, without the approval of the mayor and city council, to grant a variance from the ordinances, rules, and regulations in the kind and size of materials to be used or in the manner in which the work is to be performed. The variance shall apply only to a single building and shall not be considered as a part of the ordinances, rules, and regulations of the plumbing board. If there are practical difficulties or unnecessary hardships in the manner of strictly carrying out such ordinance, the plumbing board shall have the power, in passing upon a variance, to vary or modify the application of any of the regulations or provisions of such ordinance relating to the use, construction, or alteration of buildings or structures or the use of land, so that the intent of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. The board shall have power to compel the owner or

contractor to first submit the plans and specifications for plumbing that is to be placed in any building or adjoining premises to the board for approval before it shall be installed in such building or premises. When an owner or contractor submits a request for a variance, the plumbing board shall charge a reasonable fee, payable to the general fund, not to exceed twenty-five dollars. The Building Board of Review shall have the authority to hear appeals from the plumbing board in matters regarding variances and interpretation of ordinances, plumbing code changes, rules, and regulations. The Building Board of Review shall adopt rules governing such appeals.

Source: Laws 1901, c. 21, § 3, p. 322; R.S.1913, § 5279; C.S.1922, § 4502; C.S.1929, § 19-306; R.S.1943, § 19-306; Laws 1961, c. 57, § 6, p. 212; Laws 1975, LB 153, § 2; Laws 1990, LB 1221, § 2.

18-1907 License; examination; when; subject matter.

Any person desiring to do any plumbing, or to work at the business of plumbing, in any such city or village which has established a plumbing board, shall make written application to the plumbing board for examination for a license, which examination shall be made at the next meeting of the board, or at an adjourned meeting. If the applicant is an individual, the application shall include the applicant's social security number. The board shall examine the applicant as to his or her practical knowledge of plumbing, house drainage, ventilation, and sanitation, which examination shall be practical as well as theoretical; and if the applicant has shown himself or herself competent, the plumbing board shall cause its chairperson and secretary to execute and deliver to the applicant a license authorizing him or her to do plumbing in such city or village and also within the area of the zoning jurisdiction outside the corporate limits of cities of the metropolitan class.

Source: Laws 1901, c. 21, § 5, p. 323; R.S.1913, § 5280; C.S.1922, § 4503; C.S.1929, § 19-307; R.S.1943, § 19-307; Laws 1961, c. 57, § 7, p. 213; Laws 1965, c. 76, § 2, p. 310; Laws 1997, LB 752, § 76.

18-1908 License; renewal; reexamination; when.

All original licenses may be renewed and all renewal licenses may be renewed by the plumbing board at the dates of their expiration. Such renewal licenses shall be granted, without a reexamination, upon the written application of the licensee filed with the board and showing that his purposes and condition remain unchanged, unless it is made to appear by affidavit before the board that the applicant is no longer competent, or entitled to such renewal license, in which event the renewal license shall not be granted until the applicant has undergone the examination hereinbefore required.

Source: Laws 1901, c. 21, § 6, p. 323; R.S.1913, § 5281; C.S.1922, § 4504; C.S.1929, § 19-308; R.S.1943, § 19-308.

18-1909 License; term; revocation; suspension; grounds; notice and hearing.

All original and renewal licenses shall be good for one year or two years from the date of issuance as determined by the plumbing board, except that any license may be revoked or suspended by the plumbing board at any time upon a hearing upon sufficient written, sworn charges filed with the board showing the

holder of the license to be incompetent or guilty of a willful breach of the rules, regulations, or requirements of the board or of the laws or ordinances relating thereto or of other causes sufficient for the revocation or suspension of his or her license, of which charges and hearing the holder of such license shall have written notice.

Source: Laws 1901, c. 21, § 7, p. 324; R.S.1913, § 5282; C.S.1922, § 4505; C.S.1929, § 19-309; R.S.1943, § 19-309; Laws 1990, LB 1221, § 3; Laws 1995, LB 36, § 3.

18-1910 License; required; compliance with codes; exception.

It shall be unlawful for any person to do any plumbing in any such city or village, or within the area of the zoning jurisdiction outside the corporate limits of cities of the metropolitan class, which has established a plumbing board unless he holds a proper license. It shall be unlawful for any person to make any connection to water mains extended from within and beyond the zoning jurisdiction of a city of the metropolitan class which has established a plumbing board, unless he complies with the applicable plumbing codes of the metropolitan city and holds a proper license as required thereby; *Provided,* that the requirements of this section shall not apply to employees of the water utility acting within the scope of their employment.

Source: Laws 1901, c. 21, § 8, p. 324; R.S.1913, § 5283; C.S.1922, § 4506; C.S.1929, § 19-310; R.S.1943, § 19-310; Laws 1961, c. 57, § 8, p. 213; Laws 1965, c. 76, § 3, p. 310; Laws 1972, LB 1257, § 1.

18-1911 License; fees; disposition.

The fee for the original license of a journeyman plumber shall be one dollar for a one-year license and two dollars for a two-year license. All renewal fees shall be fifty cents for a one-year license and one dollar for a two-year license. All license fees shall be paid, prior to the execution and delivery of the license, to the treasurer of the school district within the city or village for which the license was issued to be used exclusively for the support of the common schools therein.

Source: Laws 1901, c. 21, § 9, p. 324; R.S.1913, § 5284; C.S.1922, § 4507; C.S.1929, § 19-311; R.S.1943, § 19-311; Laws 1961, c. 57, § 9, p. 214; Laws 1995, LB 36, § 4.

18-1912 Inspector; duties; assistants.

The city or village plumbing inspector shall inspect all plumbing work in process of construction, alteration or repair within his respective jurisdiction, and for which a permit either has or has not been granted, and shall report to said board all violations of any law or ordinance, or rule or regulation of the board, in connection with the plumbing work being done, and also shall perform such other appropriate duties as may be required of him by said board. If necessary, the mayor, by the consent of the council, the city manager, or the chairman and board of trustees, shall employ one or more assistant inspectors, who shall be practical licensed plumbers, to assist in the performance of the duties of the inspector.

Source: Laws 1901, c. 21, § 10, p. 324; R.S.1913, § 5285; C.S 1922, § 4508; C.S.1929, § 19-312; R.S.1943, § 19-312; Laws 1961, c. 57, § 10, p. 214.

18-1913 Defective work; cessation; removal.

The inspector shall be required to stop any plumbing work not being done in accordance with the requirements of the rules and regulations of the board; and the plumbing board shall have the power to cause plumbing to be removed, if, after notice to the owner or plumber doing the work, the board shall find the work or any part thereof to be defective.

Source: Laws 1901, c. 21, § 11, p. 325; R.S.1913, § 5286; C.S.1922, § 4509; C.S.1929, § 19-313; R.S.1943, § 19-313.

18-1914 Violations; penalties.

Any person violating any of the provisions of sections 18-1901 to 18-1913, or of any lawful ordinance or rules and regulations, authorized hereby, shall be deemed guilty of a misdemeanor, and shall be fined not exceeding fifty dollars nor less than five dollars for each and every violation thereof. If such person holds a plumber's license he shall forfeit the same, and it shall be void, and he shall not be entitled to another plumber's license for one year after such forfeiture is declared against him by the board.

Source: Laws 1901, c. 21, § 14, p. 325; R.S.1913, § 5287; C.S.1922, § 4510; C.S.1929, § 19-314; R.S.1943, § 19-314.

18-1915 Permit fees; inspection; provisions applicable.

The State of Nebraska shall permit cities and villages to collect permit fees and inspect all sanitary plumbing installed or repaired, except for a single-family dwelling or a farm or ranch structure, within the State of Nebraska outside of the zoning jurisdiction of cities and villages. The city or village nearest the construction site shall have jurisdiction to collect such permit fees and conduct the inspection of the sanitary plumbing. If the city or village has a plumbing ordinance in force and effect, such ordinance will govern the installation of the sanitary plumbing. If there is no city ordinance in effect for such city or village, the American National Standards Institute Uniform Plumbing Code, ANSI A40-1993, shall apply to all buildings except single-family dwellings and farm and ranch structures.

Any code or ordinance enacted by a city or village which is at least equal to the American National Standards Institute Uniform Plumbing Code, ANSI A40-1993, shall take preference over the provisions of the immediately preceding sentence.

Source: Laws 1969, c. 100, § 1, p. 474; Laws 1996, LB 1304, § 2.

18-1916 Installation; repair; permit required.

No sanitary plumbing shall be installed or repaired in any building except a single-family dwelling or a farm or ranch structure by any person, partnership, limited liability company, corporation, or other legal entity without a permit issued by the city or village nearest the construction site.

Source: Laws 1969, c. 100, § 2, p. 475; Laws 1993, LB 121, § 140.

18-1917 Installation; repair; who can perform.

Any person, partnership, limited liability company, corporation, or other legal entity who installs or repairs any sanitary plumbing within the state shall be a duly qualified master plumber licensed by the city or village nearest the

construction site. The employees of the master plumbers who perform the actual installation or repair of sanitary plumbing shall also be licensed as journeymen plumbers by the city or village nearest the construction site.

Source: Laws 1969, c. 100, § 3, p. 475; Laws 1993, LB 121, § 141.

18-1918 Permit fees; installation or repair without permit; penalty.

The city or village which has jurisdiction of the construction or repair of the sanitary plumbing shall be entitled to permit fees, according to its ordinance. Any person, partnership, limited liability company, corporation, or other legal entity making installation or repair of sanitary plumbing in any building except a single-family dwelling without the required permit from the city or village shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than fifty dollars nor more than five hundred dollars.

Source: Laws 1969, c. 100, § 4, p. 475; Laws 1993, LB 121, § 142.

18-1919 License requirement; exemption.

Nothing in sections 18-1915 to 18-1919 shall be construed to require an employee working for a single employer as part of such employer's full-time staff and not holding himself out to the public for hire to hold a license while acting within the scope of his employment.

Source: Laws 1969, c. 100, § 5, p. 475.

18-1920 Scald prevention device requirements; compliance required.

Nothing in sections 18-1901 to 18-1919 shall be construed to exempt persons from compliance with sections 71-1569 to 71-1571.

Source: Laws 1987, LB 264, § 4.

ARTICLE 20
STREET IMPROVEMENTS

Section

18-2001 Street improvements; without petition or creation of district; when.

Any city or village may, without petition or creating a street improvement district, grade, curb, gutter, and pave any portion of a street otherwise paved so as to make one continuous paved street, but the portion to be so improved shall not exceed two blocks, including intersections, or thirteen hundred and twenty-five feet, whichever is the lesser. Such city or village may also grade, curb, gutter, and pave any unpaved street or alley which intersects a paved street for a distance of not to exceed one block on either side of such paved street. The improvements authorized by this section may be performed upon any portion of a street or any unpaved street or alley not previously improved to meet or exceed the minimum standards for pavement set by the city or village for its paved streets.

Source: Laws 1963, c. 76, § 1, p. 280; Laws 1965, c. 75, § 1, p. 307; Laws 1974, LB 652, § 1; Laws 1999, LB 738, § 1.

City improperly used this section to pave a three-block area with two gap paving districts. Iverson v. City of North Platte, 243 Neb. 506, 500 N.W.2d 574 (1993).

The authorization for special assessment for street improvements in sections 18-2001 to 18-2003 does not extend to a street section already paved. Turner v. City of North Platte, 203 Neb. 706, 279 N.W.2d 868 (1979).

These statutes are clear, unambiguous, and constitutional. Gaughen v. Sloup, 197 Neb. 762, 250 N.W.2d 915 (1977).

A street covered with material forming a solid aggregate 3 to 5 inches thick consisting of compacted layers of gravel and an oil-type substance and creating a firm, level surface for vehicular travel is paved within the meaning of Nebraska's ''gap and extend'' law. Benesch v. City of Schuyler, 5 Neb. App. 59, 555 N.W.2d 63 (1996).

18-2002 Street improvements; additional authorization.

Any city or village may, without petition or creating a street improvement district, order the grading, curbing, guttering, and paving of any side street or alley within its corporate limits connecting with a major traffic street for a distance not to exceed one block from such major traffic street. The improvements authorized by this section may be performed upon any side street or alley not previously improved to meet or exceed the minimum standards for pavement set by the city or village for its paved streets.

Source: Laws 1963, c. 76, § 2, p. 280; Laws 1965, c. 75, § 2, p. 308; Laws 1999, LB 738, § 2.

The authorization for special assessment for street improvements in sections 18-2001 to 18-2003 does not extend to a street section already paved. Turner v. City of North Platte, 203 Neb. 706, 279 N.W.2d 868 (1979).

18-2003 Special taxes and assessments; bonds; warrants; interest on amounts due; contractor; sinking fund.

In order to defray the costs and expenses of the improvements authorized by sections 18-2001 and 18-2002, the mayor and council or chairman and board of trustees, as the case may be, may levy and collect special taxes and assessments upon the lots and parcels of real estate adjacent to or abutting upon the portion of the street or alley thus improved, or which may be specially benefited by such improvements, notwithstanding that the same may be unplatted and not subdivided; and the method of levying, equalizing, and collecting such special assessments, and generally financing such improvements by bond issues and other means, shall be as provided by law for paving and street improvements in such municipality. For the purpose of paying the cost of street improvements as provided in section 18-2001 the mayor and council or chairman and board of trustees, as the case may be, shall have the power, after the improvements have been completed and accepted, to issue negotiable bonds of such city or village to be called Paving Bonds, payable in not exceeding fifteen years and bearing interest payable annually or semiannually, which may be sold by the city for not less than the par value thereof. For the purpose of making partial payments as the work progresses, warrants bearing interest may be issued by the governing body of the city or village upon certificates of the engineer in charge showing the amount of work completed and materials necessarily purchased and delivered for the orderly and proper continuation of the project, in a sum not exceeding ninety-five percent of the cost thereof until the work has been completed and accepted by the city or village, at which time a warrant for the balance of the amount may be issued, which warrants shall be redeemed and paid upon the sale of the bonds or from any other funds available. The city or village shall pay to the contractor interest at the rate of eight percent per annum on the amounts due on partial and final payments beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the governing body, and running until the date that the warrant is tendered to the contractor. All special assessments which may be levied upon property specially benefited by such work or improvements shall, when collect-

ed, be set aside and constitute a sinking fund for the payment of the interest and principal of such bonds. There shall be levied annually upon all taxable property in such city or village a tax which, together with such sinking fund derived from special assessments, shall be sufficient to meet payments of interest and principal as the same become due.

Source: Laws 1963, c. 76, § 3, p. 280; Laws 1965, c. 75, § 3, p. 308; Laws 1969, c. 51, § 69, p. 316; Laws 1974, LB 636, § 6.

''Adjacent,'' as used in this section, means to lie near, close, or contiguous. Iverson v. City of North Platte, 243 Neb. 506, 500 N.W.2d 574 (1993).

The authorization for special assessment for street improvements in sections 18-2001 to 18-2003 does not extend to a street section already paved. Turner v. City of North Platte, 203 Neb. 706, 279 N.W.2d 868 (1979).

18-2004 Sections, how construed.

Nothing in sections 18-2001 to 18-2004 shall be construed to repeal or amend any statutes except those hereinafter specifically repealed, and sections 18-2001 to 18-2004 shall be construed as an independent and complete act. Other statutes may be relied upon, if need be, to supplement and effectuate the purposes of sections 18-2001 to 18-2004.

Source: Laws 1965, c. 75, § 4, p. 309.

18-2005 Street; common boundary with county or other municipality; concurrent and joint jurisdiction; limitation.

The governing body of any city shall have concurrent and joint jurisdiction with the county board of any county and the governing body of any municipality over any street which is contiguous to and forms a common boundary between such city and any county or municipality. The governing body of any city shall have the right and authority to exercise all powers over such street as it may over streets within its corporate limits with the cooperation and concurrence of the county board or the governing body of any other municipality. Nothing herein shall be construed as granting any power of annexation which is not otherwise granted.

Source: Laws 1973, LB 71, § 1.

ARTICLE 21

COMMUNITY DEVELOPMENT

Section

Section

18-2101 Act, how cited.

Sections 18-2101 to 18-2144 shall be known and may be cited as the Community Development Law.

Source: Laws 1951, c. 224, § 1, p. 797; R.R.S.1943, § 14-1601; Laws 1957, c. 52, § 1, p. 247; R.R.S.1943, § 19-2601; Laws 1973, LB 299, § 1; Laws 1997, LB 875, § 2; Laws 2007, LB562, § 1.

In considering a challenge to actions taken by a community redevelopment authority pursuant to the Community Development Law, a district court may disturb the decision of the community redevelopment authority only if it determines that the decision was illegal or is not supported by the evidence and is thus arbitrary, unreasonable, or clearly wrong. Under the Community Development Law, land cannot be added to an existing community redevelopment area unless (1) the additional land is declared blighted or substandard within the meaning of the Community Development Law or (2) the additional land is reasonably necessary to accomplish the implementation of the existing redevelopment plan. Fitzke v. City of Hastings, 255 Neb. 46, 582 N.W.2d 301 (1998).

18-2101.01 Creation of agency; cooperation with federal government; taxes, bonds, and notes; other powers.

Cities of all classes and villages of this state are hereby granted power and authority to create a community development agency by ordinance, which agency may consist of the governing body of the city or village or a new or existing municipal division or department, or combination thereof. When such an agency is created, it shall function in the manner prescribed by ordinance and may exercise all of the power and authority granted to a community redevelopment authority in sections 18-2101 to 18-2144. Cities of all classes and villages of this state are also granted power and authority to do all community development activities, and to do all things necessary to cooperate with the federal government in all matters relating to community development program activities as a grantee, or as an agent or otherwise, under the provisions of the federal Housing and Community Development Act of 1974, as amended through the Housing and Community Development Amendments of 1981. Whenever such a city exercises the power conferred in this section, it may levy taxes for the exercise of such jurisdiction and authority and may issue general obligation bonds, general obligation notes, revenue bonds, and revenue notes including general obligation and revenue refunding bonds and notes for the purposes set forth in such sections and under the power granted to any authority described.

Source: Laws 1973, LB 299, § 2; Laws 1976, LB 445, § 1; Laws 1979, LB 158, § 1; Laws 1980, LB 986, § 1; Laws 1983, LB 71, § 7.

18-2102 Legislative findings and declarations.

It is hereby found and declared that there exist in cities of all classes and villages of this state areas which have deteriorated and become substandard and blighted because of the unsafe, insanitary, inadequate, or overcrowded condition of the dwellings therein, or because of inadequate planning of the area, or excessive land coverage by the buildings thereon, or the lack of proper light and air and open space, or because of the defective design and arrangement of the buildings thereon, or faulty street or lot layout, or congested traffic conditions, or economically or socially undesirable land uses. Such conditions or a combination of some or all of them have resulted and will continue to result in making such areas economic or social liabilities harmful to the social and economic well-being of the entire communities in which they exist, needlessly increasing public expenditures, imposing onerous municipal burdens, decreasing the tax base, reducing tax revenue, substantially impairing or arresting the sound growth of municipalities, aggravating traffic problems,

substantially impairing or arresting the elimination of traffic hazards and the improvement of traffic facilities, and depreciating general community-wide values. The existence of such areas contributes substantially and increasingly to the spread of disease and crime, necessitating excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, punishment and the treatment of juvenile delinquency, and for the maintenance of adequate police, fire, and accident protection and other public services and facilities. These conditions are beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the aids herein provided. The elimination of such conditions and the acquisition and preparation of land in or necessary to the renewal of substandard and blighted areas and its sale or lease for development or redevelopment in accordance with general plans and redevelopment plans of communities and any assistance which may be given by any state public body in connection therewith are public uses and purposes for which public money may be expended and private property acquired. The necessity in the public interest for the provisions of the Community Development Law is hereby declared to be a matter of legislative determination.

It is further found and declared that the prevention and elimination of blight is a matter of state policy, public interest, and statewide concern and within the powers and authority inhering in and reserved to the state, in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, and consume an excessive proportion of their revenue.

It is further found and declared that certain substandard and blighted areas, or portions thereof, may require acquisition, clearance, and disposition, subject to use restrictions, as provided in the Community Development Law, since the prevailing conditions of decay may make impracticable the reclamation of the area by conservation or rehabilitation; that other areas or portions thereof may, through the means provided in the Community Development Law, be susceptible of conservation or rehabilitation in such a manner that the conditions and evils, hereinbefore enumerated, may be eliminated, remedied, or prevented; and that salvageable substandard and blighted areas can be conserved and rehabilitated through appropriate public action and the cooperation and voluntary action of the owners and tenants of property in such areas.

Source: Laws 1951, c. 224, § 2, p. 797; R.R.S.1943, § 14-1602; Laws 1957, c. 52, § 2, p. 247; Laws 1961, c. 61, § 1, p. 223; R.R.S. 1943, § 19-2602; Laws 1965, c. 74, § 1, p. 298; Laws 1997, LB 875, § 3.

18-2102.01 Creation of authority or limited authority; name; membership; optional election; officers and employees; quorum; interest in contracts; accounts; loan from city; finances; deposits; audit.

Cities of all classes and villages of this state are hereby granted power and authority to create community redevelopment authorities and limited community redevelopment authorities.

(1) Whenever an authority or limited authority is created it shall bear the name of the city creating it and shall be legally known as the Community Redevelopment Authority of the City (or Village) of ..... (name of city or

village) or the Limited Community Redevelopment Authority of the City (or Village) of ..... (name of city or village).

(2) When it is determined by the governing body of any city by ordinance in the exercise of its discretion that it is expedient to create a community redevelopment authority or limited community redevelopment authority, the mayor of the city or, if the mayor shall fail to act within ninety days after the passage of the ordinance, the president or other presiding officer other than the mayor of the governing body, with the approval of the governing body of the city, shall appoint five persons who shall constitute the authority or the limited authority. The terms of office of the members of the authority initially appointed shall be for one year, two years, three years, four years, and five years, as designated by the mayor, president, other presiding officer, or city manager in making the respective appointments. As the terms of the members of the authority expire in cities not having the city manager form of government, the mayor, with the approval of the governing body of the city, shall appoint or reappoint a member of the authority for a term of five years to succeed the member whose term expires. In cities having the city manager form of government, the city manager shall appoint or reappoint the members with the approval of the governing body. The terms of office of the members of a limited community redevelopment authority shall be for the duration of only one single specific limited pilot project authorized in the ordinance creating the limited community redevelopment authority, and the terms of the members of a limited community redevelopment authority shall expire upon the completion of the single specific limited pilot project authorized in the ordinance creating the limited community redevelopment authority. A governing body may at its option submit an ordinance which creates a community redevelopment authority or a limited community redevelopment authority to the electors of the city for approval by a majority vote of the electors voting on the ordinance. On submitting the ordinance for approval, the governing body is authorized to call, by the ordinance, a special or general election and to submit, after thirty days' notice of the time and place of holding the election and according to the manner and method otherwise provided by law for the calling, conducting, canvassing, and certifying of the result of city elections on the submission of propositions to the electors, the proposition to be stated on the ballot as follows:

Shall the City (or Village) of ..... (name of city or village) create a Community Redevelopment Authority of the City (or Village) of ..... (name of city or village)?

... Yes

... No.

When the ordinance submitted to the electors for approval by a majority vote of the electors voting on the ordinance is to create a limited community redevelopment authority the proposition shall be stated on the ballot as follows:

Shall the City (or Village) of ..... (name of city or village) create a Limited Community Redevelopment Authority of the City (or Village) of .... (name of city or village)?

... Yes

... No.

Vacancies shall be filled for any unexpired term in the same manner as the original appointment. Members of the authority so appointed shall hold office until their successors have been appointed and qualified. Members of a limited authority shall hold office as provided in this section. All members of the authority shall serve without compensation, but shall be entitled to be reimbursed for all necessary expenses incurred.

(3) Any authority established under this section shall organize by electing one of its members chairperson and another vice-chairperson, shall have power to employ counsel, a director who shall be ex officio secretary of the authority, and such other officers and employees as may be desired, and shall fix the term of office, qualifications, and compensation of each. The holder of the office of community redevelopment administrator or coordinator of the city may, but need not, be appointed the director but at no additional compensation by the authority. Community redevelopment authorities of cities of the first and second class and villages may secure the services of a director, community redevelopment administrator, or coordinator, and other officers and employees as may be desired through contract with the Department of Economic Development upon terms which are mutually agreeable. Any authority established under this section may validly and effectively act on all matters requiring a resolution or other official action by a majority vote of its membership present at a meeting of the authority if a quorum of four is present. Orders, requisitions, warrants, and other documents may be executed by the chairperson or vice-chairperson or by or with others designated in its bylaws.

(4) No member or employee of any authority established under this section shall have any interest directly or indirectly in any contract for property, materials, or services to be required by such authority.

(5) The authority shall keep an accurate account of all its activities and of all receipts and disbursements and make an annual report of such activities, receipts, and disbursements to the governing body of the city.

(6) The governing body of a city creating a community redevelopment authority or a limited community redevelopment authority is hereby authorized to appropriate and loan to the authority a sum not exceeding ten thousand dollars for the purposes of paying expenses of organizing and supervising the work of the authority at the beginning of its activities. The loan shall be authorized by resolution of the governing body which shall set forth the terms and time of the repayment of the loan. The loan may be appropriated out of the general funds or any sinking fund.

(7) All income, revenue, profits, and other funds received by any authority established under this section from whatever source derived, or appropriated by the city, or realized from tax receipts or comprised in the special revenue fund of the city designated for the authority or from the proceeds of bonds, or otherwise, shall be deposited with the city treasurer as ex officio treasurer of the authority without commingling the money with any other money under his or her control and disbursed by him or her by check, draft, or order only upon warrants, orders, or requisitions by the chairperson of the authority or other person authorized by the authority which shall state distinctly the purpose for which the same are drawn. A permanent record shall be kept by the authority of all warrants, orders, or requisitions so drawn, showing the date, amount, consideration, and to whom payable. When paid, the same shall be canceled and kept on file by the city treasurer. The books of any authority established

under this section shall from time to time be audited upon the order of the governing body of the municipality in such manner as it may direct, and all books and records of the authority shall at all times be open to public inspection. The authority may contract with the holders of any of its bonds or notes as to collection, custody, securing investment, and payment of any money of the authority or any money held in trust or otherwise for the payment of bonds or notes or in any way to secure bonds or notes. The authority may carry out the contract notwithstanding that such contract may be inconsistent with the previous provisions of this subdivision. All banks, capital stock financial institutions, qualifying mutual financial institutions, and trust companies are hereby authorized to give security for the deposits of money of any authority established under the provisions of this section pursuant to the Public Funds Deposit Security Act. Section 77-2366 applies to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1957, c. 52, § 3, p. 248; Laws 1961, c. 61, § 2, p. 224; Laws 1963, c. 89, § 9, p. 307; R.S.Supp.,1963, § 19-2602.01; Laws 1965, c. 74, § 2, p. 300; Laws 1967, c. 87, § 1, p. 273; Laws 1969, c. 106, § 1, p. 484; Laws 1969, c. 107, § 1, p. 499; Laws 1989, LB 33, § 23; Laws 1997, LB 875, § 4; Laws 1999, LB 396, § 19; Laws 2001, LB 362, § 26.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

18-2103 Terms, defined.

For purposes of the Community Development Law, unless the context otherwise requires:

(1) An authority means any community redevelopment authority created pursuant to section 18-2102.01 and a city or village which has created a community development agency pursuant to the provisions of section 18-2101.01 and does not include a limited community redevelopment authority;

(2) Limited community redevelopment authority means a community redevelopment authority created pursuant to section 18-2102.01 having only one single specific limited pilot project authorized;

(3) City means any city or incorporated village in the state;

(4) Public body means the state or any municipality, county, township, board, commission, authority, district, or other political subdivision or public body of the state;

(5) Governing body or local governing body means the city council, board of trustees, or other legislative body charged with governing the municipality;

(6) Mayor means the mayor of the city or chairperson of the board of trustees of the village;

(7) Clerk means the clerk of the city or village;

(8) Federal government means the United States of America, or any agency or instrumentality, corporate or otherwise, of the United States of America;

(9) Area of operation means and includes the area within the corporate limits of the city and such land outside the city as may come within the purview of section 18-2123;

(10) Substandard areas means an area in which there is a predominance of buildings or improvements, whether nonresidential or residential in character, which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime, (which cannot be remedied through construction of prisons), and is detrimental to the public health, safety, morals, or welfare;

(11) Blighted area means an area, which (a) by reason of the presence of a substantial number of deteriorated or deteriorating structures, existence of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations, or constitutes an economic or social liability and is detrimental to the public health, safety, morals, or welfare in its present condition and use and (b) in which there is at least one of the following conditions: (i) Unemployment in the designated area is at least one hundred twenty percent of the state or national average; (ii) the average age of the residential or commercial units in the area is at least forty years; (iii) more than half of the plotted and subdivided property in an area is unimproved land that has been within the city for forty years and has remained unimproved during that time; (iv) the per capita income of the area is lower than the average per capita income of the city or village in which the area is designated; or (v) the area has had either stable or decreasing population based on the last two decennial censuses. In no event shall a city of the metropolitan, primary, or first class designate more than thirty-five percent of the city as blighted, a city of the second class shall not designate an area larger than fifty percent of the city as blighted, and a village shall not designate an area larger than one hundred percent of the village as blighted;

(12) Redevelopment project means any work or undertaking in one or more community redevelopment areas: (a) To acquire substandard and blighted areas or portions thereof, including lands, structures, or improvements the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such substandard and blighted areas; (b) to clear any such areas by demolition or removal of existing buildings, structures, streets, utilities, or other improvements thereon and to install, construct, or reconstruct streets, utilities, parks, playgrounds, public spaces, public parking facilities, sidewalks or moving sidewalks, convention and civic centers, bus stop shelters, lighting, benches or other similar furniture, trash receptacles, shelters, skywalks and pedestrian and vehicular overpasses and underpasses, and any other necessary public improvements essential to the preparation of sites for uses in accordance with a redevelopment plan; (c) to sell, lease, or otherwise make available land in such areas for residential, recreational, commercial, industrial, or other uses, including parking or other facilities functionally related or subordinate to such uses, or for public use or to retain such land for public use,

in accordance with a redevelopment plan; and may also include the preparation of the redevelopment plan, the planning, survey, and other work incident to a redevelopment project and the preparation of all plans and arrangements for carrying out a redevelopment project; (d) to dispose of all real and personal property or any interest in such property, or assets, cash, or other funds held or used in connection with residential, recreational, commercial, industrial, or other uses, including parking or other facilities functionally related or subordinate to such uses, or any public use specified in a redevelopment plan or project, except that such disposition shall be at its fair value for uses in accordance with the redevelopment plan; (e) to acquire real property in a community redevelopment area which, under the redevelopment plan, is to be repaired or rehabilitated for dwelling use or related facilities, repair or rehabilitate the structures, and resell the property; and (f) to carry out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the redevelopment plan;

(13) Redevelopment plan means a plan, as it exists from time to time for one or more community redevelopment areas, or for a redevelopment project, which (a) conforms to the general plan for the municipality as a whole and (b) is sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the community redevelopment area, zoning and planning changes, if any, land uses, maximum densities, and building requirements;

(14) Redeveloper means any person, partnership, or public or private corporation or agency which enters or proposes to enter into a redevelopment contract;

(15) Redevelopment contract means a contract entered into between an authority and a redeveloper for the redevelopment of an area in conformity with a redevelopment plan;

(16) Real property means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise, and the indebtedness secured by such liens;

(17) Bonds means any bonds, including refunding bonds, notes, interim certificates, debentures, or other obligations issued pursuant to the Community Development Law except for bonds issued pursuant to section 18-2142.04;

(18) Obligee means any bondholder, agent, or trustee for any bondholder, or lessor demising to any authority, established pursuant to section 18-2102.01, property used in connection with a redevelopment project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with such authority;

(19) Person means any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative thereof;

(20) Community redevelopment area means a substandard and blighted area which the community redevelopment authority designates as appropriate for a renewal project;

(21) Redevelopment project valuation means the valuation for assessment of the taxable real property in a redevelopment project last certified for the year prior to the effective date of the provision authorized in section 18-2147;

(22) Enhanced employment area means an area not exceeding six hundred acres (a) within a community redevelopment area which is designated by an authority as eligible for the imposition of an occupation tax or (b) not within a community redevelopment area as may be designated under section 18-2142.04;

(23) Employee means a person employed at a business as a result of a redevelopment project;

(24) Employer-provided health benefit means any item paid for by the employer in total or in part that aids in the cost of health care services, including, but not limited to, health insurance, health savings accounts, and employer reimbursement of health care costs;

(25) Equivalent employees means the number of employees computed by (a) dividing the total hours to be paid in a year by (b) the product of forty times the number of weeks in a year;

(26) Business means any private business located in an enhanced employment area;

(27) New investment means the value of improvements to real estate made in an enhanced employment area by a developer or a business;

(28) Number of new employees means the number of equivalent employees that are employed at a business as a result of the redevelopment project during a year that are in excess of the number of equivalent employees during the year immediately prior to the year that a redevelopment plan is adopted; and

(29) Occupation tax means a tax imposed under section 18-2142.02.

Source: Laws 1951, c. 224, § 3, p. 797; R.R.S.1943, § 14-1603; Laws 1957, c. 52, § 4, p. 249; Laws 1961, c. 61, § 3, p. 227; R.R.S. 1943, § 19-2603; Laws 1965, c. 74, § 3, p. 303; Laws 1969, c. 106, § 2, p. 488; Laws 1973, LB 299, § 3; Laws 1979, LB 158, § 2; Laws 1980, LB 986, § 2; Laws 1984, LB 1084, § 2; Laws 1993, LB 121, § 143; Laws 1997, LB 875, § 5; Laws 2007, LB562, § 2.

18-2103.01 Repealed. Laws 1969, c. 257, § 44.

18-2103.02 Acquisition of housing property; relocation of persons displaced.

When any property consisting of housing is acquired for redevelopment by the authority, the authority shall provide for relocation of any persons displaced as a result thereof.

Source: Laws 1965, c. 74, § 5, p. 306.

18-2104 Exercise of powers; objective.

The governing body of a city, to the greatest extent it deems to be feasible in carrying out the provisions of sections 18-2101 to 18-2144, shall afford maximum opportunity, consistent with the sound needs of the city as a whole, to the rehabilitation or redevelopment of the community redevelopment area by private enterprises. The governing body of a city shall give consideration to this objective in exercising its powers under sections 18-2101 to 18-2144, including

the formulation of a workable program, the approval of community redevelopment plans consistent with the general plan for the development of the city, the exercise of its zoning powers, the enforcement of other laws, codes, and regulations, relating to the use of land and the use and occupancy of buildings and improvements, the disposition of any property acquired, and the providing of necessary public improvements.

Source: Laws 1951, c. 224, § 4(1), p. 800; R.R.S.1943, § 14-1604; Laws 1957, c. 52, § 5, p. 252; Laws 1961, c. 61, § 4, p. 230; R.R.S. 1943, § 19-2604.

18-2105 Formulation of workable program; disaster assistance; effect.

The governing body of a city or an authority at its direction for the purposes of the Community Development Law may formulate for the entire municipality a workable program for utilizing appropriate private and public resources to eliminate or prevent the development or spread of urban blight, to encourage needed urban rehabilitation, to provide for the redevelopment of substandard and blighted areas, or to undertake such of the aforesaid activities or other feasible municipal activities as may be suitably employed to achieve the objectives of such workable program. Such workable program may include, without limitation, provision for the prevention of the spread of blight into areas of the municipality which are free from blight through diligent enforcement of housing, zoning, and occupancy controls and standards; the rehabilitation or conservation of substandard and blighted areas or portions thereof by replanning, removing congestion, providing parks, playgrounds, and other public improvements by encouraging voluntary rehabilitation and by compelling the repair and rehabilitation of deteriorated or deteriorating structures; and the clearance and redevelopment of substandard and blighted areas or portions thereof.

Notwithstanding any other provisions of the Community Development Law, where the local governing body certifies that an area is in need of redevelopment or rehabilitation as a result of flood, fire, hurricane, earthquake, storm, or other catastrophe respecting which the Governor of the state has certified the need for disaster assistance under federal law, the local governing body may approve a redevelopment plan and a redevelopment project with respect to such area without regard to the provisions of the Community Development Law requiring a general plan for the municipality and notice and public hearing or findings other than herein set forth.

Source: Laws 1951, c. 224, § 4(2), p. 800; R.R.S.1943, § 14-1605; Laws 1957, c. 52, § 6, p. 253; Laws 1961, c. 61, § 5, p. 231; R.R.S. 1943, § 19-2605; Laws 1997, LB 875, § 6.

The Community Development Law gives local governing bodies the discretion to remove blighted designations as they see fit to best serve the sound needs of the community. Prime Realty Dev., Inc. v. City of Omaha, 258 Neb. 72, 602 N.W.2d 13 (1999).

18-2106 Authority; member or employee; interest in project or property; restriction; disclosure.

No member or employee of an authority shall voluntarily acquire any interest, direct or indirect, in any redevelopment project or in any property included or planned by the authority to be included in any such project, or in any contract or proposed contract in connection with any such project. Where the acquisition is not voluntary, such member or employee shall immediately

disclose such interest in writing to the authority and such disclosure shall be entered upon the minutes of the authority. If any member or employee of an authority presently owns or controls or owned or controlled within the preceding two years an interest, direct or indirect, in any property included or planned by the authority to be included in any redevelopment project, he immediately shall disclose such interest in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Upon such disclosure such member or employee of an authority shall not participate in any action by the authority affecting such property.

Source: Laws 1951, c. 224, § 4(3), p. 801; R.R.S.1943, § 14-1606; R.R.S. 1943, § 19-2606.

18-2107 Authority; powers and duties.

An authority shall constitute a public body corporate and politic, exercising public and essential governmental functions and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the Community Development Law and sections 18-2147 to 18-2151, including the power:

(1) To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make and from time to time amend and repeal bylaws, rules, and regulations not inconsistent with the Community Development Law;

(2) To prepare or cause to be prepared and recommend redevelopment plans to the governing body of the city and to undertake and carry out redevelopment projects within its area of operation;

(3) To arrange or contract for the furnishing or repair, by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities for or in connection with a redevelopment project; and, notwithstanding anything to the contrary contained in the Community Development Law or any other provision of law, to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of a redevelopment project, and to include in any contract let in connection with such a project provisions to fulfill such federally imposed conditions as it may deem reasonable and appropriate;

(4) Within its area of operation, to purchase, lease, obtain options upon, or acquire by gift, grant, bequest, devise, eminent domain, or otherwise any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project; to hold, improve, clear, or prepare for redevelopment any such property; to sell, lease for a term not exceeding ninety-nine years, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real or personal property or any interest therein; to enter into contracts with redevelopers of property containing covenants, restrictions, and conditions regarding the use of such property for residential, commercial, industrial, or recreational purposes or for public purposes in accordance with the redevelopment plan and such other covenants, restrictions, and conditions as the authority may deem necessary to prevent a recurrence of substandard

and blighted areas or to effectuate the purposes of the Community Development Law; to make any of the covenants, restrictions, or conditions of the foregoing contracts covenants running with the land and to provide appropriate remedies for any breach of any such covenants or conditions, including the right in the authority to terminate such contracts and any interest in the property created pursuant thereto; to borrow money, issue bonds, and provide security for loans or bonds; to establish a revolving loan fund; to insure or provide for the insurance of any real or personal property or the operation of the authority against any risks or hazards, including the power to pay premiums on any such insurance; to enter into any contracts necessary to effectuate the purposes of the Community Development Law; and to provide grants, loans, or other means of financing to public or private parties in order to accomplish the rehabilitation or redevelopment in accordance with a redevelopment plan. No statutory provision with respect to the acquisition, clearance, or disposition of property by other public bodies shall restrict an authority exercising powers hereunder, in such functions, unless the Legislature shall specifically so state;

(5) To invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement in property or securities in which savings banks or other banks may legally invest funds subject to their control; and to redeem its bonds at the redemption price established therein or to purchase its bonds at less than redemption price, and such bonds redeemed or purchased shall be canceled;

(6) To borrow money and to apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government, from the state, county, municipality, or other public body, or from any sources, public or private, including charitable funds, foundations, corporations, trusts, or bequests, for purposes of the Community Development Law, to give such security as may be required, and to enter into and carry out contracts in connection therewith; and notwithstanding any other provision of law, to include in any contract for financial assistance with the federal government for a redevelopment project such conditions imposed pursuant to federal law as the authority may deem reasonable and appropriate and which are not inconsistent with the purposes of the Community Development Law;

(7) Acting through one or more members of an authority or other persons designated by the authority, to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths and to issue commissions for the examination of witnesses who are outside of the state or unable to attend before the authority or excused from attendance; and to make available to appropriate agencies or public officials, including those charged with the duty of abating or requiring the correction of nuisances or like conditions, demolishing unsafe or insanitary structures, or eliminating conditions of blight within its area of operation, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, safety, morals, or welfare;

(8) Within its area of operation, to make or have made all surveys, appraisals, studies, and plans, but not including the preparation of a general plan for the community, necessary to the carrying out of the purposes of the Community Development Law and to contract or cooperate with any and all persons or agencies, public or private, in the making and carrying out of such surveys, appraisals, studies, and plans;

(9) To prepare plans and provide reasonable assistance for the relocation of families, business concerns, and others displaced from a redevelopment project area to permit the carrying out of the redevelopment project to the extent essential for acquiring possession of and clearing such area or parts thereof; and to make relocation payments to or with respect to such persons for moving expenses and losses of property for which reimbursement or compensation is not otherwise made, including the making of such payments financed by the federal government;

(10) To make such expenditures as may be necessary to carry out the purposes of the Community Development Law; and to make expenditures from funds obtained from the federal government without regard to any other laws pertaining to the making and approval of appropriations and expenditures;

(11) To certify on or before September 20 of each year to the governing body of the city the amount of tax to be levied for the succeeding fiscal year for community redevelopment purposes, not to exceed two and six-tenths cents on each one hundred dollars upon the taxable value of the taxable property in such city, which levy is subject to allocation under section 77-3443 on and after July 1, 1998. The governing body shall levy and collect the taxes so certified at the same time and in the same manner as other city taxes are levied and collected, and the proceeds of such taxes, when due and as collected, shall be set aside and deposited in the special account or accounts in which other revenue of the authority is deposited. Such proceeds shall be employed to assist in the defraying of any expenses of redevelopment plans and projects, including the payment of principal and interest on any bonds issued to pay the costs of any such plans and projects;

(12) To exercise all or any part or combination of powers granted in this section;

(13) To plan, undertake, and carry out neighborhood development programs consisting of redevelopment project undertakings and activities in one or more community redevelopment areas which are planned and carried out on the basis of annual increments in accordance with the Community Development Law and sections 18-2145 and 18-2146 for planning and carrying out redevelopment projects; and

(14) To agree with the governing body of the city for the imposition of an occupation tax for an enhanced employment area.

Source: Laws 1951, c. 224, § 5, p. 801; R.R.S.1943, § 14-1607; Laws 1957, c. 52, § 7, p. 253; Laws 1961, c. 61, § 6, p. 232; R.R.S. 1943, § 19-2607; Laws 1969, c. 106, § 3, p. 491; Laws 1979, LB 158, § 3; Laws 1979, LB 187, § 79; Laws 1980, LB 986, § 3; Laws 1985, LB 52, § 1; Laws 1992, LB 1063, § 11; Laws 1992, Second Spec. Sess., LB 1, § 11; Laws 1993, LB 734, § 28; Laws 1995, LB 452, § 5; Laws 1997, LB 269, § 20; Laws 1997, LB 875, § 7; Laws 2007, LB562, § 3.

The taking of substandard or blighted areas by a city for redevelopment and resale in accordance with an approved redevelopment plan which is in conformity with a general plan for the municipality as a whole as provided for in these sections, is a proper public use for a municipality. Monarch Chemical Works, Inc. v. City of Omaha, 203 Neb. 33, 277 N.W.2d 423 (1979).

18-2108 Real estate; acquisition; requirement.

An authority shall not acquire real property for a redevelopment project unless the governing body of the city in which the redevelopment project area is

located has approved the redevelopment plan, as prescribed in section 18-2116.

Source: Laws 1951, c. 224, § 6(1), p. 804; R.R.S.1943, § 14-1608; R.R.S. 1943, § 19-2608.

18-2109 Redevelopment plan; preparation; requirements.

An authority shall not prepare a redevelopment plan for a redevelopment project area unless the governing body of the city in which such area is located has, by resolution adopted after a public hearing with notice provided as specified in section 18-2115, declared such area to be a substandard and blighted area in need of redevelopment. The governing body of the city shall submit the question of whether an area is substandard and blighted to the planning commission or board of the city for its review and recommendation prior to making its declaration. The planning commission or board shall submit its written recommendations within thirty days after receipt of the request. Upon receipt of the recommendations or after thirty days if no recommendation is received, the governing body may make its declaration.

Source: Laws 1951, c. 224, § 6(2), p. 805; R.R.S.1943, § 14-1609; Laws 1957, c. 52, § 8, p. 257; Laws 1961, c. 61, § 7, p. 236; R.R.S. 1943, § 19-2609; Laws 1997, LB 875, § 8.

18-2110 Plan; recommendation; requirement.

An authority shall not recommend a redevelopment plan to the governing body of the city in which the redevelopment project area is located until a general plan for the development of the city has been prepared.

Source: Laws 1951, c. 224, § 6(3), p. 805; R.R.S.1943, § 14-1610; R.R.S. 1943, § 19-2610.

18-2111 Plan; who may prepare; contents.

The authority may itself prepare or cause to be prepared a redevelopment plan or any person or agency, public or private, may submit such a plan to an authority. A redevelopment plan shall be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements, and the proposed land uses and building requirements in the redevelopment project area, and shall include without being limited to: (1) The boundaries of the redevelopment project area, with a map showing the existing uses and condition of the real property therein; (2) a land-use plan showing proposed uses of the area; (3) information showing the standards of population densities, land coverage, and building intensities in the area after redevelopment; (4) a statement of the proposed changes, if any, in zoning ordinances or maps, street layouts, street levels or grades, or building codes and ordinances; (5) a site plan of the area; and (6) a statement as to the kind and number of additional public facilities or utilities which will be required to support the new land uses in the area after redevelopment. Any redevelopment plan may include a proposal for the designation of an enhanced employment area.

Source: Laws 1951, c. 224, § 6(4), p. 805; R.R.S.1943, § 14-1611; R.R.S. 1943, § 19-2611; Laws 2007, LB562, § 4.

18-2112 Plan; submit to planning commission or board; recommendations.

Prior to recommending a redevelopment plan to the governing body for approval, an authority shall submit such plan to the planning commission or board of the city in which the redevelopment project area is located for review and recommendations as to its conformity with the general plan for the development of the city as a whole. The planning commission or board shall submit its written recommendations with respect to the proposed redevelopment plan to the authority within thirty days after receipt of the plan for review. Upon receipt of the recommendations of the planning commission or board or, if no recommendations are received within such thirty days, then without such recommendations, an authority may recommend the redevelopment plan to the governing body of the city for approval.

Source: Laws 1951, c. 224, § 6(5), p. 805; R.R.S.1943, § 14-1612; Laws 1961, c. 61, § 8, p. 236; R.R.S.1943, § 19-2612.

18-2113 Plan; considerations; cost-benefit analysis.

(1) Prior to recommending a redevelopment plan to the governing body for approval, an authority shall consider whether the proposed land uses and building requirements in the redevelopment project area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted, and harmonious development of the city and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic, and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and other public utilities, schools, parks, recreational and community facilities, and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of insanitary or unsafe dwelling accommodations or conditions of blight.

(2) The authority shall conduct a cost-benefit analysis for each redevelopment project whose redevelopment plan includes the use of funds authorized by section 18-2147. In conducting the cost-benefit analysis, the authority shall use a cost-benefit model developed for use by local projects. Any cost-benefit model used by the authority shall consider and analyze the following factors:

(a) Tax shifts resulting from the approval of the use of funds pursuant to section 18-2147;

(b) Public infrastructure and community public service needs impacts and local tax impacts arising from the approval of the redevelopment project;

(c) Impacts on employers and employees of firms locating or expanding within the boundaries of the area of the redevelopment project;

(d) Impacts on other employers and employees within the city or village and the immediate area that are located outside of the boundaries of the area of the redevelopment project; and

(e) Any other impacts determined by the authority to be relevant to the consideration of costs and benefits arising from the redevelopment project.

Source: Laws 1951, c. 224, § 6(6), p. 806; R.R.S.1943, § 14-1613; Laws 1957, c. 52, § 9, p. 257; R.R.S.1943, § 19-2613; Laws 1997, LB 875, § 9; Laws 1999, LB 774, § 1.

18-2114 Plan; recommendations to governing body; statements required.

The recommendation of a redevelopment plan by an authority to the governing body shall be accompanied by the recommendations, if any, of the planning commission or board concerning the redevelopment plan; a statement of the proposed method and estimated cost of the acquisition and preparation for redevelopment of the redevelopment project area and the estimated proceeds or revenue from its disposal to redevelopers; a statement of the proposed method of financing the redevelopment project; and a statement of a feasible method proposed for the relocation of families to be displaced from the redevelopment project area.

Source: Laws 1951, c. 224, § 6(7), p. 806; R.R.S.1943, § 14-1614; Laws 1961, c. 61, § 9, p. 236; R.R.S.1943, § 19-2614.

18-2115 Plan; public hearing; notice.

(1) The governing body of the city shall hold a public hearing on any redevelopment plan or substantial modification thereof recommended by the authority, after reasonable public notice thereof by publication at least once a week for two consecutive weeks in a legal newspaper of general circulation in the community, the time of the hearing to be at least ten days from the last publication. The notice shall describe the time, date, place, and purpose of the hearing and shall specifically identify the area to be redeveloped under the plan. All interested parties shall be afforded at such public hearing a reasonable opportunity to express their views respecting the proposed redevelopment plan.

(2) Except as provided in subsection (3) of this section, the governing body of the city or such other division of the city or person as the governing body shall designate shall, at least ten days prior to the public hearing required by subsection (1) of this section, mail notice of the hearing by first-class United States mail, postage prepaid, or by certified mail to all registered neighborhood associations whose area of representation is located in whole or in part within a one-mile radius of the area to be redeveloped and to the president or chairperson of the governing body of each county, school district, community college, educational service unit, and natural resources district in which the real property subject to such plan or major modification is located and whose property tax receipts would be directly affected. The notice shall set out the time, date, place, and purpose of the hearing and shall include a map of sufficient size to show the area to be redeveloped.

(3) If the planning board or planning commission of the city will conduct a public hearing on the redevelopment plan or substantial modification thereof, the governing body of the city or such other division of the city or person as the governing body shall designate shall, at least ten days prior to the public hearing, mail notice of the hearing by first-class United States mail, postage prepaid, or by certified mail to all registered neighborhood associations whose area of representation is located in whole or in part within a one-mile radius of the area to be redeveloped and to the president or chairperson of the governing

body of each county, school district, community college, educational service unit, and natural resources district in which the real property subject to such plan or major modification is located and whose property tax receipts would be directly affected. The notice shall set out the time, date, place, and purpose of the hearing and shall include a map of sufficient size to show the area to be redeveloped. If the registered neighborhood association has been given notice of the public hearing to be held by the planning board or planning commission in conformity with the provisions of this subsection, the governing body or its designee shall not be required to comply with the notice requirements of subsection (2) of this section.

(4) Each neighborhood association desiring to receive notice of any hearing as provided in this section shall register with the city's planning department or, if there is no planning department, with the city clerk. The registration shall include a description of the area of representation of the association and the name and address of the individual designated by the association to receive the notice on its behalf. Registration of the neighborhood association for the purposes of this section shall be accomplished in accordance with such other rules and regulations as may be adopted and promulgated by the city.

Source: Laws 1951, c. 224, § 6(8), p. 807; R.R.S.1943, § 14-1615; Laws 1957, c. 52, § 10, p. 258; R.R.S.1943, § 19-2615; Laws 1995, LB 140, § 1; Laws 1997, LB 875, § 10.

18-2116 Plan; approval; findings.

(1) Following such hearing, the governing body may approve a redevelopment plan if (a) it finds that the plan is feasible and in conformity with the general plan for the development of the city as a whole and the plan is in conformity with the legislative declarations and determinations set forth in the Community Development Law and (b) it finds that, if the plan uses funds authorized in section 18-2147, (i) the redevelopment project in the plan would not be economically feasible without the use of tax-increment financing, (ii) the redevelopment project would not occur in the community redevelopment area without the use of tax-increment financing, and (iii) the costs and benefits of the redevelopment project, including costs and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services have been analyzed by the governing body and have been found to be in the long-term best interest of the community impacted by the redevelopment project.

(2) In connection with the approval of any redevelopment plan which includes the designation of an enhanced employment area, the governing body may approve the redevelopment plan if it determines that any new investment within such enhanced employment area will result in at least (a) two new employees and new investment of one hundred twenty-five thousand dollars in counties with fewer than fifteen thousand inhabitants, (b) five new employees and new investment of two hundred fifty thousand dollars in counties with at least fifteen thousand inhabitants but fewer than twenty-five thousand inhabitants, (c) ten new employees and new investment of five hundred thousand dollars in counties with at least twenty-five thousand inhabitants but fewer than fifty thousand inhabitants, (d) fifteen new employees and new investment of one million dollars in counties with at least fifty thousand inhabitants but fewer than one hundred thousand inhabitants, (e) twenty new employees and new

investment of one million five hundred thousand dollars in counties with at least one hundred thousand inhabitants but fewer than two hundred thousand inhabitants, (f) twenty-five new employees and new investment of two million dollars in counties with at least two hundred thousand inhabitants but fewer than four hundred thousand inhabitants, or (g) thirty new employees and new investment of three million dollars in counties with at least four hundred thousand inhabitants. Any business that has one hundred thirty-five thousand square feet or more and annual gross sales of ten million dollars or more shall provide an employer-provided health benefit of at least three thousand dollars annually to all new employees who are working thirty hours per week or more on average and have been employed at least six months. In making such determination, the governing body may rely upon written undertakings provided by any redeveloper in connection with application for approval of the redevelopment plan.

Source: Laws 1951, c. 224, § 6(9), p. 807; R.R.S.1943, § 14-1616; Laws 1957, c. 52, § 11, p. 258; R.R.S.1943, § 19-2616; Laws 1997, LB 875, § 11; Laws 2007, LB562, § 5.

18-2117 Plan; modification; conditions.

A redevelopment plan which has not been approved by the governing body when recommended by the authority may again be recommended to it with any modifications deemed advisable. A redevelopment plan may be modified at any time by the authority; *Provided,* that if modified after the lease or sale of real property in the redevelopment project area, the modification must be consented to by the redeveloper or redevelopers of such real property or his successor, or their successors, in interest affected by the proposed modification. Where the proposed modification will substantially change the redevelopment plan as previously approved by the governing body the modification must similarly be approved by the governing body.

Source: Laws 1951, c. 224, § 6(10), p. 807; R.R.S.1943, § 14-1617; R.R.S. 1943, § 19-2617.

18-2117.01 Plan; report to Property Tax Administrator; contents; compilation of data.

(1) On or before December 1 each year, each city which has approved one or more redevelopment plans which are financed in whole or in part through the use of tax-increment financing as provided in section 18-2147 shall provide a report to the Property Tax Administrator on each such redevelopment plan which includes the following information:

(a) A copy of the redevelopment plan and any amendments thereto if they have not been previously filed, including the date upon which the redevelopment plan was approved, the effective date for dividing the ad valorem tax as provided to the county assessor pursuant to subsection (3) of section 18-2147, and the location and boundaries of the property in the redevelopment project; and

(b) A short narrative description of the type of development undertaken by the city or village with the financing and the type of business or commercial activity locating within the redevelopment project area as a result of the redevelopment project.

(2) The Property Tax Administrator shall compile a report for each active redevelopment project, based upon information provided by the cities pursuant to subsection (1) of this section and information reported by the county assessor or county clerk on the certificate of taxes levied pursuant to section 77-1613.01. Each report shall be transmitted to the Clerk of the Legislature not later than March 1 each year. The report may include any recommendations of the Property Tax Administrator as to what other information should be included in the report from the cities so as to facilitate analysis of the uses, purposes, and effectiveness of tax-increment financing and the process for its implementation or to streamline the reporting process provided for in this section to eliminate unnecessary paperwork.

Source: Laws 1997, LB 875, § 12; Laws 1999, LB 774, § 2; Laws 2006, LB 808, § 1.

18-2118 Real estate; sell; lease; transfer; terms.

An authority may sell, lease for a term not exceeding ninety-nine years, exchange, or otherwise transfer real property or any interest therein in a redevelopment project area to any redeveloper for residential, recreational, commercial, industrial, or other uses, including parking or other facilities functionally related or subordinate to such uses, or for public use in accordance with the redevelopment plan, subject to such covenants, conditions, and restrictions as it may deem to be in the public interest or to carry out the purposes of the Community Development Law. Such real property shall be sold, leased, or transferred at its fair value for uses in accordance with the redevelopment plan. In determining the fair value of real property for uses in accordance with the redevelopment plan, an authority shall take into account and give consideration to the uses and purposes required by such plan; the restrictions upon, and the covenants, conditions, and obligations assumed by the redeveloper of such property; the objectives of the redevelopment plan for the prevention of the recurrence of substandard and blighted areas; and such other matters as the authority shall specify as being appropriate. In fixing rentals and selling prices, an authority shall give consideration to appraisals of the property for such uses made by land experts employed by the authority.

Source: Laws 1951, c. 224, § 7(1), p. 808; R.R.S.1943, § 14-1618; Laws 1957, c. 52, § 12, p. 258; Laws 1961, c. 61, § 10, p. 237; R.R.S.1943, § 19-2618; Laws 1979, LB 158, § 4; Laws 1997, LB 875, § 13.

18-2119 Redevelopment contract proposal; notice; considerations; acceptance; disposal of real property; contract relating to real estate within an enhanced employment area; recordation.

(1) An authority shall, by public notice by publication once each week for two consecutive weeks in a legal newspaper having a general circulation in the city, prior to the consideration of any redevelopment contract proposal relating to real estate owned or to be owned by the authority, invite proposals from, and make available all pertinent information to, private redevelopers or any persons interested in undertaking the redevelopment of an area, or any part thereof, which the governing body has declared to be in need of redevelopment. Such notice shall identify the area, and shall state that such further information as is available may be obtained at the office of the authority. The authority shall

consider all redevelopment proposals and the financial and legal ability of the prospective redevelopers to carry out their proposals and may negotiate with any redevelopers for proposals for the purchase or lease of any real property in the redevelopment project area. The authority may accept such redevelopment contract proposal as it deems to be in the public interest and in furtherance of the purposes of the Community Development Law if the authority has, not less than thirty days prior thereto, notified the governing body in writing of its intention to accept such redevelopment contract proposal. Thereafter, the authority may execute such redevelopment contract in accordance with the provisions of section 18-2118 and deliver deeds, leases, and other instruments and take all steps necessary to effectuate such redevelopment contract. In its discretion, the authority may, without regard to the foregoing provisions of this section, dispose of real property in a redevelopment project area to private redevelopers for redevelopment under such reasonable competitive bidding procedures as it shall prescribe, subject to the provisions of section 18-2118.

(2) In the case of any real estate owned by a redeveloper, the authority may enter into a redevelopment contract providing for such undertakings as the authority shall determine appropriate. Any such redevelopment contract relating to real estate within an enhanced employment area shall include a statement of the redeveloper's consent with respect to the designation of the area as an enhanced employment area, shall be recorded with respect to the real estate owned by the redeveloper, and shall be binding upon all future owners of such real estate.

Source: Laws 1951, c. 224, § 7(2), p. 809; R.R.S.1943, § 14-1619; R.R.S. 1943, § 19-2619; Laws 2007, LB562, § 6.

18-2120 Project; conveyance of property for public use.

In carrying out a redevelopment project, an authority may: (1) Convey to the city in which the project is located, such real property as, in accordance with the redevelopment plan, is to be laid out into streets, alleys, and public ways; (2) grant servitudes, easements, and rights-of-way, for public utilities, sewers, streets, and other similar facilities, in accordance with the redevelopment plan; and (3) convey to the municipality, county, or other appropriate public body, such real property as, in accordance with the redevelopment plan, is to be used for parks, schools, public buildings, facilities, or other public purposes.

Source: Laws 1951, c. 224, § 7(3), p. 809; R.R.S.1943, § 14-1620; R.R.S. 1943, § 19-2620.

18-2121 Real property; temporary operation, when.

An authority may temporarily operate and maintain real property in a redevelopment project area pending the disposition of the property for redevelopment, without regard to the provisions of sections 18-2118 and 18-2119, for such uses and purposes as may be deemed desirable even though not in conformity with the redevelopment plan.

Source: Laws 1951, c. 224, § 7(4), p. 810; R.R.S.1943, § 14-1621; R.R.S. 1943, § 19-2621.

18-2122 Real property; eminent domain; effect of resolution.

An authority shall have the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for a redevel-

opment project or for its purposes under the provisions of sections 18-2101 to 18-2144 after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

When an authority has found and determined by resolution that certain real property described therein is necessary for a redevelopment project or for its purposes under the provisions of sections 18-2101 to 18-2144, the resolution shall be conclusive evidence that the acquisition of such real property is necessary for the purposes described therein.

Source: Laws 1951, c. 224, § 8, p. 810; R.R.S.1943, § 14-1622; Laws 1961, c. 61, § 11, p. 237; R.R.S.1943, § 19-2622.

The taking of substandard or blighted areas by a city for redevelopment and resale in accordance with an approved redevelopment plan which is in conformity with a general plan for the municipality as a whole as provided for in these sections, is a proper public use for a municipality. Monarch Chemical Works, Inc. v. City of Omaha, 203 Neb. 33, 277 N.W.2d 423 (1979).

18-2123 Undeveloped vacant land; land outside city; acquisition, when.

Upon a determination, by resolution, of the governing body of the city in which such land is located, that the acquisition and development of undeveloped vacant land, not within a substandard or blighted area, is essential to the proper clearance or redevelopment of substandard or blighted areas or a necessary part of the general community redevelopment program of the city, or that the acquisition and development of land outside the city, but within a radius of three miles thereof, is necessary or convenient to the proper clearance or redevelopment of one or more substandard or blighted areas within the city or is a necessary adjunct to the general community redevelopment program of the city, the acquisition, planning, and preparation for development or disposal of such land shall constitute a redevelopment project which may be undertaken by the authority in the manner provided in the foregoing sections.

Source: Laws 1951, c. 224, § 9, p. 810; R.R.S.1943, § 14-1623; Laws 1957, c. 52, § 13, p. 259; Laws 1961, c. 61, § 12, p. 238; R.R.S.1943, § 19-2623.

18-2124 Bonds; issuance; sources of payment; limitations.

An authority shall have power to issue bonds from time to time in its discretion for any of its corporate purposes, including the payment of principal and interest upon any advances for surveys and plans for redevelopment projects. An authority shall also have power to issue refunding bonds for the purpose of paying, retiring, or otherwise refinancing, or in exchange for any or all of the principal or interest upon bonds previously issued by it. An authority may issue such types of bonds as it may determine, including, without limiting the generality of the foregoing, bonds on which the principal and interest are payable: (1) Exclusively from the income, proceeds, and revenue of the redevelopment project financed with proceeds of such bonds; (2) exclusively from the income, proceeds, and revenue of any of its redevelopment projects whether or not they are financed in whole or in part with the proceeds of such bonds; (3) exclusively from its revenue and income, including such tax revenue or receipts as may be herein authorized, including those which may be pledged under section 18-2150, and from such grants and loans as may be received; or (4) from all or part of the income, proceeds and revenue enumerated in subdivi-

sions (1), (2), and (3) of this section; *Provided*, that any such bonds may be additionally secured by a pledge of any loan, grant, or contributions, or parts thereof, from the federal government or other source, or a mortgage of any redevelopment project or projects of the authority; that the authority shall not have the power to pledge the credit or taxing power of the state or any political subdivision thereof, except such tax receipts as may be authorized under this section or pledged under section 18-2150, or to place any lien or encumbrance on any property owned by the state, county, or city used by the authority.

Source: Laws 1951, c. 224, § 10(1), p. 811; R.R.S.1943, § 14-1624; Laws 1961, c. 61, § 13, p. 238; R.R.S.1943, § 19-2624; Laws 1979, LB 158, § 5.

18-2125 Bonds; liability; exempt from taxation; anticipation notes; renewal notes; terms; declaration of intent.

Neither the members of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of the authority, and such bonds and obligations shall so state on their face, shall not be a debt of the city and the city shall not be liable on such bonds, except to the extent authorized by sections 18-2147 to 18-2150, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said authority acquired for the purposes of sections 18-2101 to 18-2144, except to the extent authorized by sections 18-2147 to 18-2150. Except to the extent otherwise authorized, the bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of an authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from all taxes. All bonds shall be general obligations of the authority issuing same and shall be payable out of any revenue, income, receipts, proceeds, or other money of the authority, except as may be otherwise provided in the instruments themselves.

An authority shall have power from time to time to issue bond anticipation notes, referred to as notes herein, and from time to time to issue renewal notes, such notes in any case to mature not later than thirty months from the date of incurring the indebtedness represented thereby in an amount not exceeding in the aggregate at any time outstanding the amount of bonds then or theretofore authorized. Payment of such notes shall be made from any money or revenue which the authority may have available for such purpose or from the proceeds of the sale of bonds of the authority, or such notes may be exchanged for a like amount of such bonds. The authority may pledge such money or revenue of the authority, subject to prior pledges thereof, if any, for the payment of such notes, and may in addition secure the notes in the same manner as herein provided for bonds. All notes shall be issued and sold in the same manner as bonds, and any authority shall have power to make contracts for the future sale from time to time of notes on terms and conditions stated in such contracts, and the authority shall have power to pay such consideration as it shall deem proper for any commitments to purchase notes and bonds in the future. Such notes shall also be collaterally secured by pledges and deposits with a bank or trust company, in trust for the payment of such notes, of bonds in an aggregate amount at least equal to the amount of such notes and, in any event, in an amount deemed by the issuing authority sufficient to provide for the payment of

the notes in full at the maturity thereof. The authority may provide in the collateral agreement that the notes may be exchanged for bonds held as collateral security for the notes, or that the trustee may sell the bonds if the notes are not otherwise paid at maturity, and apply the proceeds of such sale to the payment of the notes. Such notes shall bear interest at a rate set by the authority, and shall be sold at such price as shall cause an interest cost thereon not to exceed such rate.

It is the intention hereof that any pledge of revenue, income, receipts, proceeds, or other money made by an authority for the payment of bonds or notes shall be valid and binding from the time such pledge is made; that the revenue, income, receipts, proceeds, and other money so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without the physical delivery thereof or further act, and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

Source: Laws 1951, c. 224, § 10(2), p. 811; R.R.S.1943, § 14-1625; Laws 1961, c. 61, § 14, p. 239; R.R.S.1943, § 19-2625; Laws 1969, c. 51, § 70, p. 317; Laws 1979, LB 158, § 6.

18-2126 Bonds; terms.

Bonds of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, as such resolution, its trust indenture, or mortgage may provide.

Source: Laws 1951, c. 224, § 10(3), p. 812; R.R.S.1943, § 14-1626; R.R.S. 1943, § 19-2626; Laws 1969, c. 51, § 71, p. 319.

18-2127 Bonds; sale.

The bonds may be sold by the authority in such manner and for such price as the authority may determine, at par or above par, at private sale or at public sale after notice published prior to such sale in a legal newspaper having general circulation in the municipality, or in such other medium of publication as the authority may deem appropriate, or may be exchanged by the authority for other bonds issued by it under sections 18-2101 to 18-2144 and 18-2147 to 18-2151. Bonds which are issued under this section may be sold by the authority to the federal government at private sale at par or above par, and, in the event that less than all of the authorized principal amount of such bonds is sold by the authority to the federal government, the balance or any portion of the balance may be sold by the authority at private sale at par or above par.

Source: Laws 1951, c. 224, § 10(4), p. 812; R.R.S.1943, § 14-1627; R.R.S. 1943, § 19-2627; Laws 1979, LB 158, § 7.

18-2128 Bonds; signatures; validity.

In case any of the members or officers of the authority whose signatures appear on any bonds or coupons shall cease to be such members or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such members or officers had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to the provisions of section 18-2124 shall be fully negotiable.

Source: Laws 1951, c. 224, § 10(5), p. 812; R.R.S.1943, § 14-1628; R.R.S. 1943, § 19-2628.

18-2129 Bonds; actions; effect.

In any suit, action, or proceedings involving the validity or enforceability of any bond of an authority or the security therefor, any such bond reciting in substance that it has been issued by the authority to aid in financing a redevelopment project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the purposes and provisions of sections 18-2101 to 18-2144.

Source: Laws 1951, c. 224, § 10(6), p. 813; R.R.S.1943, § 14-1629; R.R.S. 1943, § 19-2629.

18-2130 Bonds; authority; powers.

In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of such bonds or obligations, an authority, in addition to its other powers, shall have power: (1) To pledge all or any part of its gross or net rents, fees, or revenue to which its right then exists or may thereafter come into existence; (2) to mortgage all or any part of its real or personal property, then owned or thereafter acquired; (3) to covenant against pledging all or any part of its rents, fees, and revenue, or against mortgaging all or any part of its real or personal property, to which its right or title then exists or may thereafter come into existence, or against permitting or suffering any lien on such revenue or property; to covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any redevelopment project, or any part thereof; and to covenant as to what other or additional debts or obligations may be incurred by it; (4) to covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed, or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to covenant for the redemption of the bonds and to provide the terms and conditions thereof; (5) to covenant, subject to the limitations contained in the Community Development Law, as to the amount of revenue to be raised each year or other period of time by rents, fees, and other revenue, and as to the use and disposition to be made thereof; to establish or to authorize the establishment of special funds for money held for operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the money held in such funds; (6) to prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given; (7) to covenant as to the use, maintenance, and replacement of any or all

of its real or personal property, the insurance to be carried thereon, and the use and disposition of insurance money, and to warrant its title to such property; (8) to covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenants, conditions, or obligations; and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived; (9) to vest in any obligees of the authority the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in any obligee or obligees holding a specified amount in bonds the right, in the event of a default by the authority, to take possession of and use, operate, and manage any redevelopment project or any part thereof, title to which is in the authority, or any funds connected therewith, and to collect the rents and revenue arising therefrom and to dispose of such money in accordance with the agreement of the authority with such obligees; to provide for the powers and duties of such obligees and to limit the liabilities thereof; and to provide the terms and conditions upon which such obligees may enforce any covenant or rights securing or relating to the bonds; (10) to pledge all of the revenue from any occupation tax received or to be received with respect to any enhanced employment area; and (11) to exercise all or any part or combination of the powers herein granted; to make such covenants, other than and in addition to the covenants herein expressly authorized, and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or, in the absolute discretion of the authority, as will tend to make the bonds more marketable notwithstanding that such covenants, acts, or things may not be enumerated herein.

Source: Laws 1951, c. 224, § 11(1), p. 813; R.R.S.1943, § 14-1630; R.R.S. 1943, § 19-2630; Laws 2007, LB562, § 7.

18-2131 Bonds; default; causes of action.

An authority will have power by its resolution, trust indenture, mortgage, lease, or other contract to confer upon any obligee holding or representing a specified amount in bonds, the right, in addition to all rights that may otherwise be conferred, upon the happening of an event of default as defined in such resolution or instruments, by suit, action, or proceeding in any court of competent jurisdiction: (1) To cause possession of any redevelopment project or any part thereof, title to which is in the authority, to be surrendered to any such obligee; (2) to obtain the appointment of a receiver of any redevelopment project of said authority or any part thereof, title to which is in the authority, and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of, carry out, operate, and maintain such project or any part thereof and collect and receive all fees, rents, revenue, or other charges thereafter arising therefrom, and shall keep such money in a separate account or accounts and apply the same in accordance with the obligations of said authority as the court shall direct; and (3) to require the authority and the members, officers, agents, and employees thereof to account as if it and they were the trustees of an express trust.

Source: Laws 1951, c. 224, § 11(2), p. 815; R.R.S.1943, § 14-1631; R.R.S. 1943, § 19-2631.

18-2132 Repealed. Laws 2001, LB 420, § 38.

18-2133 Bonds; obligee; causes of action.

An obligee of an authority shall have the right in addition to all other rights which may be conferred upon such obligee, subject only to any contractual restrictions binding upon such obligee:

(1) By mandamus, suit, action, or proceeding at law or in equity to compel said authority and the members, officers, agents, or employees thereof to perform each and every term, provision, and covenant contained in any contract of said authority with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements to the authority and the fulfillment of all duties imposed upon the authority by the provisions of sections 18-2101 to 18-2144; and

(2) By suit, action, or proceeding in equity to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of the authority.

Source: Laws 1951, c. 224, § 13, p. 816; R.R.S.1943, § 14-1633; R.R.S. 1943, § 19-2633.

18-2134 Bonds; who may purchase.

All public officers, municipal corporations, political subdivisions and public bodies; all banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries may legally invest any sinking funds, money, or other funds belonging to them or within their control in any bonds or other obligations issued by an authority pursuant to sections 18-2101 to 18-2144 or by any public housing or redevelopment authority or commission, or agency or any other public body in the United States for redevelopment purposes, when such bonds and other obligations are secured by an agreement between the issuing agency and the federal government in which the issuing agency agrees to borrow from the federal government and the federal government agrees to lend to the issuing agency, prior to the maturity of such bonds or other obligations, money in an amount which, together with any other money irrevocably committed to the payment of interest on such bonds or other obligations, will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which money under the terms of the agreement is required to be used for the purpose of paying the principal of and the interest on such bonds or other obligations at their maturity, and such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions, and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. However, nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in the selection of securities.

Source: Laws 1951, c. 224, § 14, p. 816; R.R.S.1943, § 14-1634; R.R.S. 1943, § 19-2634.

18-2135 Federal government; contract for financial assistance; default; effect of cure.

In any contract for financial assistance with the federal government the authority may obligate itself, which obligation shall be specifically enforceable and shall not constitute a mortgage, notwithstanding any other laws, to convey to the federal government possession of or title to the redevelopment project and land therein to which such contract relates which is owned by the authority, upon the occurrence of a substantial default, as defined in such contract, with respect to the covenants or conditions to which the authority is subject; such contract may further provide that in case of such conveyance, the federal government may complete, operate, manage, lease, convey, or otherwise deal with the redevelopment project in accordance with the terms of such contract; *Provided,* that the contract requires that, as soon as practicable after the federal government is satisfied that all defaults with respect to the redevelopment project have been cured and that the redevelopment project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the authority the redevelopment project as then constituted.

Source: Laws 1951, c. 224, § 15, p. 817; R.R.S.1943, § 14-1635; R.R.S. 1943, § 19-2635.

18-2136 Property; exempt from execution.

All property including funds of an authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against an authority be a charge or lien upon its property; *Provided,* that the provisions of this section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of an authority or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees, grants, or revenue.

Source: Laws 1951, c. 224, § 16(1), p. 817; R.R.S.1943, § 14-1636; R.R.S. 1943, § 19-2636.

18-2137 Property; exempt from taxation; payments in lieu of taxes.

The property of an authority is declared to be public property used for essential public and governmental purposes and shall be exempt from all taxes. Whenever such authority shall purchase or acquire real property pursuant to sections 18-2101 to 18-2144, the authority shall annually, so long as it shall continue to own such property, pay out of its revenue to the State of Nebraska, county, city, township, school district or other taxing subdivision in which such real property is located, in lieu of taxes, a sum equal to the amount which such state, county, city, township, school district or other taxing subdivision received from taxation from such real property during the year immediately preceding the purchase or acquisition of such real property by the authority. The county board of equalization may, in any year subsequent to the purchase or acquisition of such property by the authority, determine the amount that said authority shall pay out of its revenue to the State of Nebraska and its several governmental subdivisions in lieu of taxes, which sum shall be as justice and equity may require, notwithstanding the amount which the state and its governmental subdivisions may have received from taxation during the year immediately

preceding the purchase or acquisition of such property; *Provided*, that with respect to any property in a redevelopment project, the tax exemption provided herein shall terminate when the authority sells, leases, or otherwise disposes of such property to a redeveloper for redevelopment. The members of the authority shall not incur any personal liability by reason of the making of such payments.

Source: Laws 1951, c. 224, § 16(2), p. 818; R.R.S.1943, § 14-1637; Laws 1957, c. 52, § 14, p. 260; R.R.S.1943, § 19-2637.

18-2138 Public body; cooperate in planning; powers.

In addition to any other provisions governing any public body set forth in sections 18-2101 to 18-2144 and 18-2147 to 18-2151, for the purpose of aiding and cooperating in the planning, undertaking, or carrying out of a redevelopment project located within the area in which it is authorized to act, any public body may, upon such terms, with or without consideration, as it may determine: (1) Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or any other rights or privileges therein to an authority; (2) cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished in connection with a redevelopment project; (3) furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places, which it is otherwise empowered to undertake; (4) plan or replan, zone or rezone any part of the public body, or make exceptions from building regulations and ordinances if such functions are of the character which the public body is otherwise empowered to perform; (5) cause administrative and other services to be furnished to the authority of the character which the public body is otherwise empowered to undertake or furnish for the same or other purposes; (6) incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section; (7) do any and all things necessary or convenient to aid and cooperate in the planning or carrying out of a redevelopment plan; (8) lend, grant, or contribute funds to an authority; (9) employ any funds belonging to or within the control of such public body, including funds derived from the sale or furnishing of property, service, or facilities to an authority, in the purchase of the bonds or other obligations of an authority and, as the holder of such bonds or other obligations, exercise the rights connected therewith; and (10) enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with an authority respecting action to be taken by such public body pursuant to any of the powers granted by the provisions of sections 18-2101 to 18-2144. If at any time title to, or possession of, any redevelopment project is held by any public body or governmental agency, other than the authority, authorized by law to engage in the undertaking, carrying out or administration of redevelopment projects, including any agency or instrumentality of the United States of America, the provisions of such agreements shall inure to the benefit of and may be enforced by such public body or governmental agency.

Source: Laws 1951, c. 224, § 17(1), p. 818; R.R.S.1943, § 14-1638; R.R.S. 1943, § 19-2638; Laws 1979, LB 158, § 8.

18-2139 Public body; sale, conveyance, lease, or agreement; how made.

Any sale, conveyance, lease, or agreement provided for in section 18-2138 may be made by a public body without appraisal, public notice, advertisement, or public bidding.

Source: Laws 1951, c. 224, § 17(2), p. 819; R.R.S.1943, § 14-1639; R.R.S. 1943, § 19-2639.

18-2140 Estimate of expenditures; cities; grant funds; levy taxes; issue bonds.

An authority may, at such time as it may deem necessary, file with the governing body an estimate of the amounts necessary to be appropriated by the governing body to defray the expense of the authority. The governing body of such city is hereby authorized, in its discretion, to appropriate from its general fund and to place at the disposal of the authority an amount sufficient to assist in defraying such expense. Any city located within the area of operation of an authority may grant funds to an authority for the purpose of aiding such authority in carrying out any of its powers and functions under the provisions of sections 18-2101 to 18-2144. To obtain funds for this purpose, the city may levy taxes and may issue and sell its bonds. Any bonds to be issued by the city pursuant to the provisions of this section shall be issued in the manner and within the limitations, except as otherwise provided by sections 18-2101 to 18-2144, prescribed by the laws of this state for the issuance and authorization of bonds by a city for any public purpose.

Source: Laws 1951, c. 224, § 18, p. 819; R.R.S.1943, § 14-1640; Laws 1961, c. 61, § 15, p. 241; R.R.S.1943, § 19-2640.

18-2141 Instrument of conveyance; execution; effect.

Any instrument executed by an authority and purporting to convey any right, title, or interest in any property under sections 18-2101 to 18-2144 shall be conclusive evidence of compliance with the provisions of sections 18-2101 to 18-2144 insofar as title or other interest of any bona fide purchasers, lessees, or other transferees of such property is concerned.

Source: Laws 1951, c. 224, § 19, p. 820; R.R.S.1943, § 14-1641; R.R.S. 1943, § 19-2641.

18-2142 Repealed. Laws 1997, LB 875, § 21.

18-2142.01 Validity and enforceability of bonds and agreements; presumption.

(1) In any suit, action, or proceeding involving the validity or enforceability of any bond of a city, village, or authority or the security therefor brought after the lapse of thirty days after the issuance of such bonds has been authorized, any such bond reciting in substance that it has been authorized by the city, village, or authority to aid in financing a redevelopment project shall be conclusively deemed to have been authorized for such purpose and such redevelopment project shall be conclusively deemed to have been planned, located, and carried out in accordance with the purposes and provisions of the Community Development Law and sections 18-2145 to 18-2154.

(2) In any suit, action, or proceeding involving the validity or enforceability of any agreement of a city, village, or authority brought after the lapse of thirty days after the agreement has been formally entered into, any such agreement reciting in substance that it has been entered into by the city, village, or

authority to provide financing for an approved redevelopment project shall be conclusively deemed to have been entered into for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the purposes and provisions of the Community Development Law and sections 18-2145 to 18-2154.

Source: Laws 1997, LB 875, § 16.

18-2142.02 Enhanced employment area; redevelopment project; levy of general business occupation tax authorized; governing body; powers.

A city may levy a general business occupation tax upon the businesses and users of space within an enhanced employment area for the purpose of paying all or any part of the costs and expenses of any redevelopment project within such enhanced employment area. For purposes of the tax imposed under this section, the governing body may make a reasonable classification of businesses, users of space, or kinds of transactions. The collection of a tax imposed pursuant to this section shall be made and enforced in such a manner as the governing body shall by ordinance determine to produce the required revenue. The governing body may provide that failure to pay the tax imposed pursuant to this section shall constitute a violation of the ordinance and subject the violator to a fine or other punishment as provided by ordinance. Any such occupation tax agreed to by the authority and the city shall remain in effect so long as the authority has bonds outstanding which have been issued stating such occupation tax as an available source for payment.

Source: Laws 2007, LB562, § 8.

18-2142.03 Enhanced employment area; use of eminent domain prohibited.

Eminent domain shall not be used to acquire property that will be transferred to a private party in the enhanced employment area.

Source: Laws 2007, LB562, § 9.

18-2142.04 Enhanced employment area; authorized work within area; levy of general business occupation tax authorized; governing body; powers; revenue bonds authorized; terms and conditions.

(1) For purposes of this section:

(a) Authorized work means the performance of any one or more of the following purposes within an enhanced employment area designated pursuant to this section:

(i) The acquisition, construction, maintenance, and operation of public off-street parking facilities for the benefit of the enhanced employment area;

(ii) Improvement of any public place or facility in the enhanced employment area, including landscaping, physical improvements for decoration or security purposes, and plantings;

(iii) Construction or installation of pedestrian shopping malls or plazas, sidewalks or moving sidewalks, parks, meeting and display facilities, bus stop shelters, lighting, benches or other seating furniture, sculptures, trash receptacles, shelters, fountains, skywalks, and pedestrian and vehicular overpasses and underpasses, and any useful or necessary public improvements;

(iv) Leasing, acquiring, constructing, reconstructing, extending, maintaining, or repairing parking lots or parking garages, both above and below ground, or

other facilities for the parking of vehicles, including the power to install such facilities in public areas, whether such areas are owned in fee or by easement, in the enhanced employment area;

(v) Creation and implementation of a plan for improving the general architectural design of public areas in the enhanced employment area;

(vi) The development of any public activities and promotion of public events, including the management, promotion, and advocacy of retail trade activities or other promotional activities, in the enhanced employment area;

(vii) Maintenance, repair, and reconstruction of any improvements or facilities authorized by the Community Development Law;

(viii) Any other project or undertaking for the betterment of the public facilities in the enhanced employment area, whether the project is capital or noncapital in nature;

(ix) Enforcement of parking regulations and the provision of security within the enhanced employment area; or

(x) Employing or contracting for personnel, including administrators for any improvement program under the Community Development Law, and providing for any service as may be necessary or proper to carry out the purposes of the Community Development Law;

(b) Employee means a person employed at a business located within an enhanced employment area; and

(c) Number of new employees means the number of equivalent employees that are employed at a business located within an enhanced employment area designated pursuant to this section during a year that are in excess of the number of equivalent employees during the year immediately prior to the year the enhanced employment area was designated pursuant to this section.

(2) If an area is not blighted or substandard, a city may designate an area as an enhanced employment area if the governing body determines that new investment within such enhanced employment area will result in at least (a) two new employees and new investment of one hundred twenty-five thousand dollars in counties with fewer than fifteen thousand inhabitants, (b) five new employees and new investment of two hundred fifty thousand dollars in counties with at least fifteen thousand inhabitants but fewer than twenty-five thousand inhabitants, (c) ten new employees and new investment of five hundred thousand dollars in counties with at least twenty-five thousand inhabitants but fewer than fifty thousand inhabitants, (d) fifteen new employees and new investment of one million dollars in counties with at least fifty thousand inhabitants but fewer than one hundred thousand inhabitants, (e) twenty new employees and new investment of one million five hundred thousand dollars in counties with at least one hundred thousand inhabitants but fewer than two hundred thousand inhabitants, (f) twenty-five new employees and new investment of two million dollars in counties with at least two hundred thousand inhabitants but fewer than four hundred thousand inhabitants, or (g) thirty new employees and new investment of three million dollars in counties with at least four hundred thousand inhabitants. Any business that has one hundred thirty-five thousand square feet or more and annual gross sales of ten million dollars or more shall provide an employer-provided health benefit of at least three thousand dollars annually to all new employees who are working thirty hours per week or more on average and have been employed at least six months. In

making such determination, the governing body may rely upon written undertakings provided by any owner of property within such area.

(3) Upon designation of an enhanced employment area under this section, a city may levy a general business occupation tax upon the businesses and users of space within such enhanced employment area for the purpose of paying all or any part of the costs and expenses of authorized work within such enhanced employment area. For purposes of the tax imposed under this section, the governing body may make a reasonable classification of businesses, users of space, or kinds of transactions. The collection of a tax imposed pursuant to this section shall be made and enforced in such a manner as the governing body shall by ordinance determine to produce the required revenue. The governing body may provide that failure to pay the tax imposed pursuant to this section shall constitute a violation of the ordinance and subject the violator to a fine or other punishment as provided by ordinance. Any occupation tax levied by the city under this section shall remain in effect so long as the city has bonds outstanding which have been issued under the authority of this section and are secured by such occupation tax or that state such occupation tax as an available source for payment. The total amount of occupation taxes levied shall not exceed the total costs and expenses of the authorized work including the total debt service requirements of any bonds the proceeds of which are expended for or allocated to such authorized work. The assessments or taxes levied must be specified by ordinance and the proceeds shall not be used for any purpose other than the making of such improvements and for the repayment of bonds issued in whole or in part for the financing of such improvements. The authority to levy the general business occupation tax contained in this section and the authority to issue bonds secured by or payable from such occupation tax shall be independent of and separate from any occupation tax referenced in section 18-2103.

(4) A city may issue revenue bonds for the purpose of defraying the cost of authorized work and to secure the payment of such bonds with the occupation tax revenue described in this section. Such revenue bonds may be issued in one or more series or issues where deemed advisable, and each such series or issue may contain different maturity dates, interest rates, priorities on revenue available for payment of such bonds and priorities on securities available for guaranteeing payment thereof, and such other differing terms and conditions as are deemed necessary. The following shall apply to any such bonds:

(a) Such bonds shall be limited obligations of the city. Bonds and interest on such bonds, issued under the authority of this section, shall not constitute nor give rise to a pecuniary liability of the city or a charge against its general credit or taxing powers. Such limitation shall be plainly stated upon the face of each of such bonds;

(b) Such bonds may (i) be executed and delivered at any time and from time to time, (ii) be in such form and denominations, (iii) be of such tenor, (iv) be payable in such installments and at such time or times not exceeding twenty years from their date, (v) be payable at such place or places, (vi) bear interest at such rate or rates, payable at such place or places, and evidenced in such manner, (vii) be redeemable prior to maturity, with or without premium, and (viii) contain such provisions as shall be deemed in the best interest of the city and provided for in the proceedings of the governing body under which the bonds shall be authorized to be issued;

(c) The authorization, terms, issuance, execution, or delivery of such bonds shall not be subject to sections 10-101 to 10-126; and

(d) Such bonds may be sold at public or private sale in such manner and at such time or times as may be determined by the governing body to be most advantageous. The city may pay all expenses, premiums, and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale, and issuance thereof from the proceeds or the sale of the bonds or from the revenue of the occupation tax described in this section.

Source: Laws 2007, LB562, § 10.

18-2143 Sections, how construed.

The powers conferred by sections 18-2101 to 18-2144 shall be in addition and supplemental to the powers conferred by any other law and shall be independent of and in addition to any other provision of the laws of the State of Nebraska with reference to the matters covered hereby and shall be considered as a complete and independent act and not as amendatory of or limited by any other provision of the laws of the State of Nebraska. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of sections 18-2101 to 18-2144, or the application thereof to any person or circumstances is held unconstitutional or invalid, it shall not affect the other provisions of sections 18-2101 to 18-2144 or the application of such provision to other persons or circumstances. The provisions of sections 18-2101 to 18-2144 and all grants of power, authority, rights or discretion herein made to a city and to an authority created under the provisions hereof shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of such sections are hereby expressly granted to and conferred upon a city or an authority created pursuant hereto.

Source: Laws 1951, c. 224, § 23, p. 820; R.R.S.1943, § 14-1643; Laws 1961, c. 61, § 17, p. 242; R.R.S.1943, § 19-2643.

18-2144 Sections; controlling over other laws and city charters.

Sections 18-2101 to 18-2144 shall be full authority for the creation of a community redevelopment authority by a city or village, and for the exercise of the powers therein granted to a city or village and to such authority, and shall also be full authority for the creation of a community development agency by a city or village, and for the exercise of the powers therein granted to a city or village for such purpose, and no action, proceeding, or election shall be required prior to the creation of a community redevelopment authority or community development agency hereunder or to authorize the exercise of any of the powers granted in such sections, except as specifically provided in such sections, any provision of law or of any city charter or village law to the contrary notwithstanding.

No proceedings for the issuance of bonds of an authority or of a city or village for its community development agency shall be required other than those required by the provisions of sections 18-2101 to 18-2144; and the provisions of all other laws and city charters, if any, relative to the terms and conditions for the issuance, payment, redemption, registration, sale or delivery of bonds of public bodies, corporations, or political subdivisions of this state

shall not be applicable to bonds issued by an authority pursuant to sections 18-2101 to 18-2144.

Insofar as the provisions of sections 18-2101 to 18-2144 are inconsistent with the provisions of any other law or of any city charter, if any, the provisions of sections 18-2101 to 18-2144 shall be controlling.

Source: Laws 1957, c. 52, § 15, p. 261; Laws 1961, c. 61, § 18, p. 243; R.R.S.1943, § 19-2644; Laws 1973, LB 299, § 4; Laws 1979, LB 158, § 9.

18-2145 Limited community redevelopment authority; laws applicable.

The provisions of sections 18-2101 to 18-2144 not in conflict with sections 18-2102.01, 18-2103, 18-2107, 18-2145, and 18-2146 and necessary or convenient to carry out the powers expressly conferred or the intent and purpose of sections 18-2102.01, 18-2103, 18-2107, 18-2145, and 18-2146 shall apply to the limited community redevelopment authority hereby authorized.

Source: Laws 1969, c. 106, § 5, p. 498.

18-2146 Minimum standards housing ordinance; adopt, when.

Each city and village shall adopt a minimum standards housing ordinance if such city or village has completed an approved workable program or is in the process of the preparation of such a program.

Source: Laws 1969, c. 106, § 6, p. 498; Laws 1971, LB 747, § 1.

18-2147 Ad valorem tax; division authorized; limitation; fifteen-year period.

(1) Any redevelopment plan as originally approved or as later modified pursuant to section 18-2117, may contain a provision that any ad valorem tax levied upon real property in a redevelopment project for the benefit of any public body shall be divided, for a period not to exceed fifteen years after the effective date of such a provision by the governing body, as follows:

(a) That portion of the ad valorem tax which is produced by the levy at the rate fixed each year by or for each such public body upon the redevelopment project valuation shall be paid into the funds of each such public body in the same proportion as are all other taxes collected by or for the body. When there is not a redevelopment project valuation on a parcel or parcels, the county assessor shall determine the redevelopment project valuation based upon the fair market valuation of the parcel or parcels as of January 1 of the year prior to the year that the ad valorem taxes are to be divided. The county assessor shall provide written notice of the redevelopment project valuation to the authority as defined in section 18-2103 and the owner. The authority or owner may protest the valuation to the county board of equalization within thirty days after the date of the valuation notice. All provisions of section 77-1502 except dates for filing of a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed pursuant to this section. The county board of equalization shall decide any protest filed pursuant to this section within thirty days after the filing of the protest. The county clerk shall mail a copy of the decision made by the county board of equalization on protests pursuant to this section to the authority or owner within seven days after the board's decision. Any decision of the county board of equalization may be appealed to the Tax Equalization and

Review Commission, in accordance with section 77-5013, within thirty days after the date of the decision;

(b) That portion of the ad valorem tax on real property in the redevelopment project in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the authority to be used solely to pay the principal of, the interest on, and any premiums due in connection with the bonds of, loans, notes, or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such authority for financing or refinancing, in whole or in part, the redevelopment project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premiums due, have been paid, the authority shall so notify the county assessor and county treasurer and all ad valorem taxes upon taxable real property in such a redevelopment project shall be paid into the funds of the respective public bodies; and

(c) Any interest and penalties due for delinquent taxes shall be paid into the funds of each public body in the same proportion as are all other taxes collected by or for the public body.

(2) The governing body shall not implement any plan containing a provision dividing ad valorem taxes as provided in subsection (1) of this section until such time as the real property in the redevelopment project is within the corporate boundaries of the city.

(3) Beginning August 1, 2006, all notices of the provision for dividing ad valorem taxes shall be sent by the authority to the county assessor on forms prescribed by the Property Tax Administrator. The notice shall be sent to the county assessor on or before August 1 of the year of the effective date of the provision. Failure to satisfy the notice requirement of this section shall result in the taxes, for all taxable years affected by the failure to give notice of the effective date of the provision, remaining undivided and being paid into the funds for each public body receiving property taxes generated by the property in the redevelopment project. However, the redevelopment project valuation for the remaining division of ad valorem taxes in accordance with subdivisions (1)(a) and (b) of this section shall be the last certified valuation for the taxable year prior to the effective date of the provision to divide the taxes for the remaining portion of the fifteen-year period pursuant to subsection (1) of this section.

Source: Laws 1979, LB 158, § 10; Laws 1997, LB 875, § 14; Laws 1999, LB 194, § 2; Laws 2002, LB 994, § 2; Laws 2006, LB 808, § 2; Laws 2006, LB 1175, § 2.

18-2147.01 Cost-benefit analysis; reimbursement.

The Department of Economic Development shall, to the extent that funds are appropriated for such purpose, reimburse applying cities or villages for the fees paid by such cities or villages for the use of the cost-benefit analysis model, developed and approved by the Legislature, for projects using funds authorized by section 18-2147.

Source: Laws 1999, LB 774, § 3; Laws 2000, LB 1135, § 3.

18-2148 Project valuation; county assessor; duties.

Commencing on the effective date of the provision outlined in section 18-2147, the county assessor, or county clerk where he or she is ex officio county assessor, of the county in which the redevelopment project is located, shall transmit to an authority and the county treasurer, upon request of the authority, the redevelopment project valuation and shall annually certify, on or before August 20, to the authority and the county treasurer the current valuation for assessment of taxable real property in the redevelopment project. The county assessor shall undertake, upon request of an authority, an investigation, examination, and inspection of the taxable real property in the redevelopment project and shall reaffirm or revalue the current value for assessment of such property in accordance with the findings of such investigation, examination, and inspection.

Source: Laws 1979, LB 158, § 11; Laws 2006, LB 808, § 3.

18-2149 Project valuation; how treated.

In each year after the determination of a redevelopment project valuation as outlined in section 18-2148, the county assessor and the county board of equalization shall include no more than the redevelopment project valuation of the taxable real property in the redevelopment project in the assessed valuation upon which is computed the tax rates levied by any public body on such project. In each year for which the current assessed valuation on taxable real property in the redevelopment project exceeds the redevelopment project valuation, the county treasurer shall remit to the authority, instead of to any public body, that proportion of all ad valorem taxes on real property paid that year on the redevelopment project which such excess valuation bears to the current assessed valuation.

If the current assessed valuation on taxable real property in the redevelopment project is less than the redevelopment project valuation, the current assessed valuation shall be the value assessable to the public bodies for the current year and there will be no excess valuation or tax proceeds available to the redevelopment project. The redevelopment project valuation shall be reinstated when the current assessed valuation on taxable real property in the redevelopment project is equal to or greater than the redevelopment project valuation.

Source: Laws 1979, LB 158, § 12; Laws 2006, LB 808, § 4.

18-2150 Financing; pledge of taxes.

In the proceedings for the issuance of bonds, the making of loans or advances of money, or the incurring of any indebtedness, whether funded, refunded, assumed, or otherwise, by an authority to finance or refinance, in whole or in part, a redevelopment project, the portion of taxes mentioned in subdivision (1)(b) of section 18-2147 shall be pledged for the payment of the principal of, premium, if any, and interest on such bonds, loans, notes, advances, or indebtedness.

Source: Laws 1979, LB 158, § 13; Laws 1997, LB 875, § 15.

18-2151 Redeveloper; penal bond; when required; purpose.

Any redeveloper entering into a contract with an authority for the undertaking of a redevelopment project pursuant to a redevelopment plan which contains the provision outlined in section 18-2147 shall be required before

commencing work to execute, in addition to all bonds that may be required, a penal bond with good and sufficient surety to be approved by an authority, conditioned that such contractor shall at all times promptly make payments of all amounts lawfully due to all persons supplying or furnishing the contractor or his or her subcontractors with labor or materials performed or used in the prosecution of the work provided for in such contract, and will indemnify and save harmless the authority to the extent any payments in connection with the carrying out of such contracts which an authority may be required to make under the law.

Source: Laws 1979, LB 158, § 14.

18-2152 Repealed. Laws 1988, LB 809, § 1.

18-2153 Sections, how construed.

The powers conferred by sections 18-2147 to 18-2153 shall be in addition and supplemental to the powers conferred by the Community Development Law and by any other law and shall be independent of and in addition to any other provision of the laws of the State of Nebraska with reference to the matters covered hereby. The provisions of such sections and all grants of power, authority, rights, or discretion to a city or village and to an authority created under the Community Development Law shall be liberally construed, and all incidental powers necessary to carry into effect such sections are hereby expressly granted to and conferred upon a city or village or an authority created pursuant to the Community Development Law.

Source: Laws 1979, LB 158, § 16; Laws 1991, LB 15, § 9; Laws 1999, LB 774, § 4.

Cross References

Community Development Law, see section 18-2101.

18-2154 Authority; relocate individuals and businesses; replace housing units.

A redevelopment authority shall relocate or provide assistance in the relocation of individuals, families, and businesses occupying premises acquired for a redevelopment project pursuant to the procedures described in the Relocation Assistance Act. In the event any housing units are eliminated by a redevelopment project, the redevelopment plan for any such project shall include plans for equivalent replacement housing units elsewhere in the community.

Source: Laws 1980, LB 986, § 4; Laws 1989, LB 254, § 31.

Cross References

Relocation Assistance Act, see section 76-1214.

ARTICLE 22

COMMUNITY ANTENNA TELEVISION SERVICE

Section
18-2201. Legislative declaration; regulatory powers.
18-2202. Franchise; required; validity.
18-2203. Underground cables and equipment; map required.
18-2204. Annual occupation tax; levy; when due.
18-2205. Violation; notice; penalty.

Section
18-2206. Rate increase; approval; procedure.

18-2201 Legislative declaration; regulatory powers.

The furnishing of community antenna television service is hereby declared to be a business affected with such a public interest that it must be regulated locally. All municipalities in Nebraska are hereby authorized and empowered, by ordinance, to regulate, to prohibit, and to consent to the construction, installation, operation, and maintenance within their corporate limits of all persons or entities furnishing community antenna television service. All municipalities, acting through the mayor and council or board of trustees, shall have power to require every individual or entity offering such service, subject to reasonable rules and regulations, to furnish any person applying therefor along the lines of its wires, cables or other conduits, with television and radio service. The mayor and council or board of trustees shall have power to prescribe reasonable quality standards for such service and shall regulate rate increases so as to provide reasonable and compensatory rents or rates for such service including installation charges. In the regulation of rate increases the procedure provided in section 18-2206 shall be used in any franchise granted or renewed after May 23, 1979. Such person or entity furnishing community antenna television service shall be required to carry all broadcast signals as prescribed by franchise and permitted to be carried by Federal Communications Commission regulations during the full period of the broadcast day of its stations.

Source: Laws 1959, c. 68, § 1, p. 294; R.R.S.1943, § 19-2801; Laws 1969, c. 119, § 1, p. 536; Laws 1979, LB 495, § 1.

Any statutory authority the district court might have to review rates under this section is limited only to the matter of rate increases. Plaintiff whose suit is addressed to rates as initially set rather than to an increase thereof has not stated a cause of action under this section. Bard v. Cox Cable of Omaha, Inc., 226 Neb. 880, 416 N.W.2d 4 (1987).

A merely prospective cable television customer has no standing as a ratepayer to seek to void a franchise because of excessive rates, and any complaint about the rates themselves must first be directed to the ratesetting body. Hall v. Cox Cable of Omaha, Inc., 212 Neb. 887, 327 N.W.2d 595 (1982).

18-2202 Franchise; required; validity.

It shall be unlawful for any person, firm, or corporation to construct, install, operate, or maintain in or along the streets, alleys, and public ways, or elsewhere within the corporate limits of any municipality, a community antenna television service without first obtaining, from such municipality involved, a franchise authorizing the same; and the governing bodies of such municipalities are hereby authorized to grant such a franchise and such franchise shall be effective and binding without submission to the electors and approval by a majority vote thereof, notwithstanding any other law or home rule charter, for a term of not to exceed twenty-five years upon such reasonable conditions as the circumstances may require.

Source: Laws 1959, c. 68, § 2, p. 294; R.R.S.1943, § 19-2802; Laws 1969, c. 119, § 2, p. 537; Laws 1979, LB 495, § 3.

Regulation of community antenna television service is a matter of statewide concern, so that this section, allowing approval of a franchise without a vote of the electorate, takes precedence over a home rule charter provision to the contrary. Hall v. Cox Cable of Omaha, Inc., 212 Neb. 887, 327 N.W.2d 595 (1982).

18-2203 Underground cables and equipment; map required.

Municipalities may by ordinance require the filing with the city or village clerk by the person, firm, or corporation constructing, installing, operating, or

maintaining such community antenna television service of a proper map showing the exact location of all underground cables and equipment, together with a statement showing the exact nature of the same.

Source: Laws 1959, c. 68, § 3, p. 294; R.R.S.1943, § 19-2803; Laws 1969, c. 119, § 3, p. 537.

18-2204 Annual occupation tax; levy; when due.

Municipalities may, by appropriate ordinance, levy an annual occupation tax against any person, firm, or corporation now maintaining and operating any community antenna television service within its boundaries; and may levy an annual occupation tax against any persons, firms, or corporations hereafter constructing, installing, operating, or maintaining such community antenna television service. Any such occupation tax so levied shall be due and payable on May 1 of each year to the treasurer of such city or village.

Source: Laws 1959, c. 68, § 4, p. 295; R.R.S.1943, § 19-2804; Laws 1969, c. 119, § 4, p. 538.

The power granted by this section to the city to levy by ordinance an occupation tax upon community antenna television service is a special statute which takes precedence over the general provisions of section 14-811 requiring submission of franchise annuity or royalty to the electorate. Hall v. Cox Cable of Omaha, Inc., 212 Neb. 887, 327 N.W.2d 595 (1982).

18-2205 Violation; notice; penalty.

In the event of violation of any franchise provision or the provisions of sections 18-2201 to 18-2205 by any duly franchised person or entity furnishing community antenna television service, the municipality having granted such franchise shall immediately serve notice of such violation upon the franchise holder with directions to correct such violation within ninety days or show cause why such violation should not be corrected at a public hearing held in conjunction with the next regularly scheduled meeting of the franchising body. Continued violation of sections 18-2201 to 18-2205 may be enjoined by the district court. Any person who willfully violates any provision of sections 18-2201 to 18-2205 or of any local franchise ordinance shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than five hundred dollars.

Source: Laws 1969, c. 119, § 5, p. 538.

18-2206 Rate increase; approval; procedure.

(1) Approval of a rate increase for a person or entity furnishing community antenna television service shall be required and shall be made by the council or board of trustees which granted the franchise to such person or entity. Such approval shall be made by ordinance or resolution.

(2) Prior to voting on a rate increase the council or board of trustees shall hold at least two public meetings at which the ratepayers and the franchisee may comment on the programming content and rates of such franchisee.

(3) At least thirty days prior to the first public meeting held to examine programming content and rates, each ratepayer or subscriber shall be notified by a billing statement or other written notice when and where such public meeting shall be held. Such notice shall also provide information as to what rates are proposed by the franchisee for consideration by the council or board of trustees.

Source: Laws 1979, LB 495, § 2.

ARTICLE 23
AIR CONDITIONING AIR DISTRIBUTION BOARD

Section

18-2301 Terms, defined.

As used in sections 18-2301 to 18-2315, unless the context otherwise requires:

(1) Air conditioning air distribution shall mean the control of any one or more of the following factors affecting both physical and chemical conditions of the atmosphere within a structure: Temperature, humidity, movement and purity;

(2) Furnace shall mean a self-contained, flue-connected or vented, appliance intended primarily to supply heated air through ducts to spaces remote from or adjacent to the appliance location as well as to the space in which it is located;

(3) Contractor shall mean a holder of a valid certificate of competency for air conditioning air distribution;

(4) Ventilating system shall mean each process of removing air by natural gravity exhauster or mechanical exhaust fan from any space; and

(5) Kitchen exhaust system shall mean a duct system or air passageway for removal of kitchen air contaminates by mechanical means.

Source: Laws 1969, c. 98, § 1, p. 468.

18-2302 Board for examination of contractors; membership; duties.

In any city or village, there may be a board for the examination of air conditioning air distribution contractors for the issuance of certificates of competency and for such other duties and responsibilities as may be prescribed by sections 18-2301 to 18-2315. Such board shall consist of not more than five members all of whom shall be appointed by the mayor, the chairman of the board of trustees, or the city manager with the approval of the city council. All vacancies occurring on the board by reason of death, disability or inability of a member to serve shall be filled in the same manner as the original appointment. The qualifications for members of the board may be prescribed by the city council or in the case of a village, by the board of trustees.

Source: Laws 1969, c. 98, § 2, p. 469.

18-2303 Officers; secretary; duties.

The persons who compose the air conditioning air distribution board shall, within ten days after their appointments, meet in their respective city or village building or place designated by the city council, city manager or chairman and board of trustees and organize by the selection of one of their members as chairman, one as vice-chairman, and one as secretary. It shall be the duty of the secretary to keep full, true and correct minutes and records of all meetings, applications for examinations, examinations given and results thereof, and certificates issued, which records shall be open for free inspection by all persons during business hours.

Source: Laws 1969, c. 98, § 3, p. 469.

18-2304 Members; terms; compensation.

The appointment of the air conditioning air distribution board shall be for staggered terms of three years as provided by the city council or board of trustees of the respective city or village with the appointments to be made in December of each year. Compensation shall be determined by the city council or chairman and board of trustees.

Source: Laws 1969, c. 98, § 4, p. 469.

18-2305 Meetings; certificates of competency; examination; rules.

The air conditioning air distribution board shall meet at least once a month at a fixed time as determined by the city council or chairman and board of trustees. The board shall adopt rules for the examination at such times and places of all persons who desire a certificate of competency to engage in the business of designing, installing, altering, repairing, cleaning or adding to any air conditioning air distribution system, furnace, restaurant appliance hood and duct system or other exhaust or intake ventilating system within the city or village and also within the area of zoning jurisdiction outside the corporate limits of cities of the metropolitan class.

Source: Laws 1969, c. 98, § 5, p. 469.

18-2306 Rules and regulations; approval; plans and specifications; approval.

The air conditioning air distribution board, subject to the approval of the city council or board of trustees, may adopt rules and regulations, not inconsistent with the laws of the state or the ordinances of the city or village, for the designing, installing, altering, inspecting or repairing of an air conditioning air distribution and ventilating system placed in or in connection with any building in such city or village or within the area of zoning jurisdiction outside the corporate limits of cities of the metropolitan class describing the kind and size of materials to be used in such systems and the manner in which such work shall be done. All plans and specifications for any such system to be placed in a building shall be first submitted to the board or other body designated by the council or chairman and board of trustees for its approval before it shall be installed.

Source: Laws 1969, c. 98, § 6, p. 470.

18-2307 Contractor; certificate of competency; application; examination; issuance.

Any person desiring to engage in business as an air conditioning air distribution contractor in a city or village which has established an air conditioning air distribution board or within the area of zoning jurisdiction outside the corporate limits of cities of the metropolitan class if it has such a board, shall secure a certificate of competency; and any person desiring to engage in the business, or to proceed to install, alter, repair, clean, or add to or change in any manner any air conditioning air distribution system or any furnace, restaurant appliance hood and duct system, or other exhaust or intake ventilating system within such city or village or within the area of zoning jurisdiction outside the corporate limits of cities of the metropolitan class shall be the holder of a certificate of competency or in the direct employ of a person, firm, or corporation holding such certificate. The board shall, upon written application, examine the applicant at its next meeting or at an adjourned meeting as to his or her practical and theoretical knowledge of the designing and installing of residential, commercial, and industrial air conditioning air distribution and ventilating systems and if found competent deliver to the applicant a certificate of competency. If the applicant is an individual, the application for a certificate of competency shall include the applicant's social security number.

Source: Laws 1969, c. 98, § 7, p. 470; Laws 1997, LB 752, § 77.

18-2308 Sections; exemptions.

Nothing contained in sections 18-2301 to 18-2315 shall be construed to prohibit a homeowner from personally performing air conditioning air distribution work on the property in which he resides and he will not be required to have a certificate of competency to do such work, but the work must conform to the rules and regulations set forth by the city council or chairman and board of trustees for such work as provided by the provisions of sections 18-2301 to 18-2315.

Source: Laws 1969, c. 98, § 8, p. 471.

18-2309 Certificate of competency; applicant; bond; conditions.

All applicants who have successfully passed the examination may, prior to receiving a certificate of competency, be required by the air conditioning air distribution board to furnish a corporate surety bond in the penal sum of not more than ten thousand dollars conditioned that the applicant shall, in all material by him furnished and in all work by him done and performed within the city or village or within the area of zoning jurisdiction outside the corporate limits of cities of the metropolitan class, in installing, altering and repairing any air conditioning air distribution system or ventilating system, strictly comply with all regulations of the board and ordinances of the city or village related thereto.

Source: Laws 1969, c. 98, § 9, p. 471.

18-2310 Certificate of competency; renewal; examination; when.

All original certificates of competency may be renewed and all renewed certificates of competency may be renewed by the board before the dates of their expiration. Such renewal certificates shall be granted without a reexamination upon the written application of the certificate holder filed with the board and showing that his purposes and condition remain unchanged unless it is made to appear by affidavit before the board that the certificate holder is no

longer competent or entitled to such renewal certificate, in which event the renewal certificate shall not be granted until the applicant has undergone the examination required by section 18-2307.

Source: Laws 1969, c. 98, § 10, p. 471.

18-2311 Certificate of competency; term; revocation.

All original and renewal certificates shall be good for one year from their dates but any certificate may be revoked by the board at any time after a hearing upon sufficient notice after sworn charges are filed with the board showing the holder of the certificate to be then incompetent, guilty of willful breach of the rules, regulations or requirements of the board, or of the laws or ordinances relating thereto, or of other causes sufficient for the revocation of the certificate as determined by the city council or chairman and board of trustees of each city or village of which charges and hearing the holder of such certificate shall have written notice.

Source: Laws 1969, c. 98, § 11, p. 472.

18-2312 Certificate of competency; requirement.

It shall be unlawful for any person to engage in business as an air conditioning air distribution contractor or to engage in the business of installing, altering, repairing, cleaning, adding to or changing in any manner any air conditioning air distribution system or any furnace, restaurant appliance hood or its duct system or any other exhaust or intake ventilating system within a city or village having an air conditioning air distribution board or within the area of zoning jurisdiction outside the corporate limits of cities of the metropolitan class having such a board unless he holds a certificate or is employed by a person, firm, or corporation holding such a certificate.

Source: Laws 1969, c. 98, § 12, p. 472.

18-2313 Certificate of competency; permit; fees.

Fees for the original certificates, renewal certificates and permits shall be fixed by the city council or chairman and board of trustees of each city or village having an air conditioning air distribution board. The fee for the original or renewal certificate shall in no event be more than fifty dollars.

Source: Laws 1969, c. 98, § 13, p. 472.

18-2314 Inspectors; employment authorized; noncomplying system; correction or removal.

Any city or village having an air conditioning air distribution board shall be authorized to employ inspectors who shall inspect all parts of any air conditioning air distribution system or ventilating or exhaust system in process of construction, alteration or repair within the respective jurisdiction of such city or village. Any such system found not to comply with the regulations of the board or ordinances of the city or village shall be reported to the board and if not corrected in accordance with requirements of the rules and regulations of the board and ordinances of the city or village shall be removed, if, after notice to the owner or contractor or certificate holder doing the work, the board shall

find the work or any part thereof to be defective or not in compliance with such rules and regulations or ordinances.

Source: Laws 1969, c. 98, § 14, p. 472.

18-2315 Violations; penalties.

Any person violating any of the provisions of sections 18-2301 to 18-2315 or of any lawful ordinance shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than five hundred dollars, or be imprisoned not more than six months, or be both so fined and imprisoned, and as a part of such punishment their license may be revoked.

Source: Laws 1969, c. 98, § 15, p. 473.

ARTICLE 24

MUNICIPAL COOPERATIVE FINANCING

Section

18-2401 Act, how cited.

Sections 18-2401 to 18-2485 shall be known and may be cited as the Municipal Cooperative Financing Act.

Source: Laws 1981, LB 132, § 1.

18-2402 Legislative declarations.

It is declared that cooperative action by cities and villages of this state in the fields of the supplying, treatment, and distribution of water, the generation, transmission, and distribution of electric power and energy, and the collection, treatment, and disposal of sewerage and solid waste is in the public interest; that there is a need in order to insure the stability and continued viability of such systems to provide for a means by which municipalities may cooperate with one another in the financing, acquisition, and operation of such facilities and interests therein and rights thereto in all ways possible; that the creation of agencies through which the municipalities of this state may act cooperatively is in the best interest of this state and the inhabitants thereof and is for a public use and public purpose; and that the necessity in the public interest for the provisions included in sections 18-2401 to 18-2485 is declared as a matter of legislative determination. It is further declared that the intent of sections 18-2401 to 18-2485 is to replace competition between participating municipalities in connection with the projects described in sections 18-2401 to 18-2485 by allowing such municipalities to combine and cooperate in connection with the acquisition, construction, operation, financing, and all other functions authorized by sections 18-2401 to 18-2485 with respect to such projects.

Source: Laws 1981, LB 132, § 2; Laws 1984, LB 686, § 1.

18-2403 Definitions, sections found.

For purposes of sections 18-2401 to 18-2485, unless the context otherwise requires, the definitions found in sections 18-2404 to 18-2418 shall be used.

Source: Laws 1981, LB 132, § 3.

18-2404 Act, defined.

Act shall mean the Municipal Cooperative Financing Act.

Source: Laws 1981, LB 132, § 4.

18-2405 Agency, defined.

Agency shall mean any of the public corporations created pursuant to sections 18-2401 to 18-2485.

Source: Laws 1981, LB 132, § 5.

18-2406 Board, defined.

Board shall mean the board of directors of an agency.

Source: Laws 1981, LB 132, § 6.

18-2407 Bonds, defined.

Bonds shall mean any bonds, interim certificates, notes, debentures, or other evidences of indebtedness of an agency.

Source: Laws 1981, LB 132, § 7.

18-2408 Director, defined.

Director shall mean a member of a board and shall include an alternate. The alternate shall be appointed in the same manner as the director and shall serve and exercise all powers of a director in the absence of the director for whom he or she is the alternate.

Source: Laws 1981, LB 132, § 8; Laws 1987, LB 324, § 1.

18-2409 Governing body, defined.

Governing body shall mean the council in the case of a city, the board of trustees in the case of a village, and the equivalent body in the case of a municipality incorporated under the laws of another state.

Source: Laws 1981, LB 132, § 9; Laws 1987, LB 324, § 2.

18-2410 Municipality, defined.

Municipality shall mean (1) any city or village incorporated under the laws of this state, any equivalent entity incorporated under the laws of another state, or any separate municipal utility which has autonomous control and was established by such a city, village, or equivalent entity or by the citizens thereof for the purpose of providing electric energy for such municipality or (2) any public entity organized under Chapter 70, article 6, and incorporated under the laws of this state for the sole purpose of providing wholesale electric energy to a single municipality which is incorporated under the laws of this state.

Source: Laws 1981, LB 132, § 10; Laws 1987, LB 324, § 3; Laws 2003, LB 165, § 7; Laws 2007, LB199, § 1.

18-2411 Participating municipality, defined.

Participating municipality shall mean with respect to an agency, any one of the municipalities which is entitled to appoint a director or directors of such agency pursuant to sections 18-2401 to 18-2485.

Source: Laws 1981, LB 132, § 11.

18-2412 Person, defined.

Person shall mean a natural person, public authority, private corporation, association, firm, partnership, limited liability company, or business trust of any nature whatsoever organized and existing under the laws of this state or of the United States or any other state thereof.

Source: Laws 1981, LB 132, § 12; Laws 1993, LB 121, § 144.

18-2413 Power project, defined.

Power project shall mean any plant, works, system, facilities, and real and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, used or useful in the generation, production, transmission, conservation, transformation, distribution, purchase, sale, exchange, or interchange of electric power and energy, or any interest therein or right to

capacity thereof, any energy conservation system or device for reducing the energy demands or any interest therein, and the acquisition of energy sources or fuel of any kind, for any such purposes, including, without limitation, facilities for the acquisition, transformation, collection, utilization, and disposition of nuclear fuel or solar, geothermal, or wind energy and the acquisition or construction and operation of facilities for extracting fuel including agricultural ethyl alcohol from natural deposits or agricultural products, for converting it for use in another form, for burning it in place, or for transportation and storage.

Source: Laws 1981, LB 132, § 13.

18-2414 Project, defined.

Project shall mean any power project, sewerage project, solid waste disposal project, waterworks project, or any combination of two or more thereof or any interest therein or right to capacity thereof.

Source: Laws 1981, LB 132, § 14.

18-2415 Public authority, defined.

Public authority shall mean the state, any county, any municipality or other municipal corporation, political subdivision, governmental unit, or public corporation created by or pursuant to the laws of this state, of another state, or of the United States, and any state or the United States, and any person, board, commission, district, authority, instrumentality, subdivision, or other body of any of the foregoing.

Source: Laws 1981, LB 132, § 15.

18-2416 Sewerage project, defined.

Sewerage project shall mean any plant, works, system, facilities, and real and personal property of any nature whatsoever, together with all parts and appurtenances thereto, or any interest therein or right to capacity thereof, used or useful in the removal, discharge, conduction, collection, carrying, treatment, recycling, purification, or disposal of gaseous, liquid, or solid sewage and wastes.

Source: Laws 1981, LB 132, § 16.

18-2417 Solid waste disposal project, defined.

Solid waste disposal project shall mean any plant, works, systems, facilities, and real and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, or any interest therein or right to capacity thereof, used or useful in the collection, transporting, conveying, treatment, transformation, or disposal of solid wastes.

Source: Laws 1981, LB 132, § 17.

18-2418 Waterworks project, defined.

Waterworks project shall mean any plant, works, system, facilities, and real and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, or any interest therein or right to capacity thereof,

used or useful in the supplying, transporting, conveying, collection, distribution, storing, purification, or treatment of water.

Source: Laws 1981, LB 132, § 18.

18-2419 Creation of agencies; authorized.

Any combination of two or more municipalities of this state is hereby granted power and authority to create one or more agencies to exercise the powers and authority prescribed by sections 18-2401 to 18-2485.

Source: Laws 1981, LB 132, § 19.

18-2420 Creation of agency; procedure; board of directors; appointment.

The governing body of each of the municipalities participating in the creation of such agency shall by appropriate action by ordinance or resolution determine that there is a need for such agency and set forth the names of the proposed participating municipalities of the agency. Such an action may be taken by a municipality's governing body on its own motion upon determining, in its discretion, that a need exists for an agency. In determining whether such a need exists, a governing body may take into consideration the present and future needs of the municipality with respect to the commodities and services which an agency may provide, the adequacy and suitability of the supplies of such commodities and services to meet such needs, and economic or other advantages or efficiencies which may be realized by cooperative action through an agency. Upon the adoption of an ordinance or passage of a resolution as provided in this section, the mayor, in the case of a city, the chairperson of the board of trustees, in the case of a village, or the chairperson of the governing body, of each of the proposed participating municipalities, with the approval of the respective governing body, shall appoint a director who shall be an elector of the municipality for which he or she acts as director. The directors shall constitute the board in which shall be vested all powers of the agency.

Source: Laws 1981, LB 132, § 20; Laws 2007, LB199, § 2.

18-2421 Projects other than power projects; sections applicable.

If the agency does not intend to engage in the operation of power projects or the generation or supply of electric energy, sections 18-2422 to 18-2425 shall apply.

Source: Laws 1981, LB 132, § 21.

18-2422 Projects other than power projects; directors; file certificate; contents.

The directors shall file with the Secretary of State a certificate signed by them setting forth (1) the names of all the proposed participating municipalities, (2) the name and residence of each of the directors so far as known to them, (3) a certified copy of each of the ordinances or resolutions of the participating municipalities determining the need for such an agency, (4) a certified copy of the proceedings of each municipality evidencing the director's right to office, and (5) the name of the agency. The certificate shall be subscribed and sworn to by such directors before an officer or officers authorized by the laws of the state to administer and certify oaths.

Source: Laws 1981, LB 132, § 22; Laws 2007, LB199, § 3.

18-2423 Projects other than power projects; certificate of incorporation; issuance; Secretary of State; duties.

The Secretary of State shall examine the certificate and, if he or she finds that the name proposed for the agency is not identical with that of any other corporation or public authority of this state, or so nearly similar as to lead to confusion and uncertainty, and that such certificate conforms to the requirements of sections 18-2419 to 18-2424, the Secretary of State shall record it and issue and record a certificate of incorporation. The certificate shall state the name of the agency, the fact and date of incorporation, and the names of the participating municipalities. Upon the issuance of the certificate of incorporation, the existence of the agency as a public body corporate and politic of this state shall commence. Notice of the issuance of such certificate shall be given to all of the proposed participating municipalities by the Secretary of State. If a director of any such municipality has not signed the certificate to the Secretary of State and such municipality does not notify the Secretary of State of the appointment of a director within thirty days after receipt of notice of the issuance of a certificate of incorporation, such municipality shall be deemed to have elected not to be a participating municipality. As soon as practicable after the expiration of such thirty-day period, the Secretary of State shall issue an amended certificate of incorporation, if necessary, setting forth the names of those municipalities which have elected to become participating municipalities. The failure of any proposed municipality to become a participating municipality shall not affect the validity of the corporate existence of the agency.

Source: Laws 1981, LB 132, § 23.

18-2424 Projects other than power projects; certificate of incorporation; proof of agency's establishment.

In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract of the agency, the agency shall be conclusively deemed to have been established, except as against the state, in accordance with sections 18-2401 to 18-2485 upon proof of the issuance of the certificate of incorporation by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action, or proceeding and shall be conclusive proof of the filing and contents thereof.

Source: Laws 1981, LB 132, § 24.

18-2425 Projects other than power projects; participation of additional municipalities; procedure.

After the creation of an agency, any other municipality may become a participating municipality therein upon (1) application to such agency, (2) the adoption of an ordinance or passage of a resolution by the governing body of the municipality setting forth the determination prescribed in section 18-2420 and authorizing such municipality to become a participating municipality, and (3) at least a majority vote of the directors, except that an agency's bylaws may require a greater percentage of approval for such authorization. Thereupon such municipality shall become a participating municipality entitled to appoint a director or directors of such agency in the manner prescribed by section 18-2420 and to otherwise participate in such agency to the same extent as if such municipality had participated in the creation of the agency. Upon the

filing with the Secretary of State of certified copies of the ordinances and resolutions described in this section, the Secretary of State shall issue an amended certificate of incorporation setting forth the names of the participating municipalities.

Source: Laws 1981, LB 132, § 25; Laws 2007, LB199, § 4.

18-2426 Power projects; sections applicable.

If the agency intends to engage in the operation of power projects, or the generation or supply of electric energy, the provisions of sections 18-2426 to 18-2434 shall apply.

Source: Laws 1981, LB 132, § 26.

18-2427 Power projects; creation of agency; petition; contents.

Upon adoption of ordinances or resolutions in accordance with section 18-2420, a petition shall be addressed to the Nebraska Power Review Board stating that it is the intent and purpose to create an agency pursuant to sections 18-2426 to 18-2434, subject to approval by the Nebraska Power Review Board. The petition shall state the name of the proposed agency, the names of the proposed participating municipalities, the name and residence of each of the directors so far as known, a certified copy of each of the ordinances or resolutions of the participating municipalities determining the need for such an agency, a certified copy of the proceedings of each municipality evidencing the director's right to office, a general description of the operation in which the agency intends to engage, and the location and method of operation of the proposed plants and systems of the agency.

Source: Laws 1981, LB 132, § 27; Laws 1981, LB 181, § 57; Laws 2003, LB 165, § 8; Laws 2007, LB199, § 5.

18-2428 Power projects; agency organization; conflict with certain entities; limitations.

Nothing in sections 18-2401 to 18-2485 shall be construed to prevent the organization of an agency whose participating municipalities operate within, or partly within, the territorial boundaries of a district or corporation organized under the provisions of Chapter 70, article 6, 7, or 8, so long as the plants, systems, and works, the operation of the same, the exercise of powers, and the assumption of duties and responsibilities of, or on the part of, such agency do not nullify, conflict with, or materially affect those of a district or corporation organized under the provisions of Chapter 70, article 6, 7, or 8.

Source: Laws 1981, LB 132, § 28.

18-2429 Repealed. Laws 2003, LB 165, § 15.

18-2430 Power projects; petition; approval procedure.

If the Nebraska Power Review Board determines that the statements in the petition filed pursuant to section 18-2427 are true and conform to public convenience and welfare and, so long as the plants, systems, and works, the operation of the same, the exercise of powers, and the assumption of duties and responsibilities of, or on the part of, such agency, do not nullify, conflict with, or materially affect those of a district or corporation organized under the provisions of Chapter 70, article 6 or 8 or the Electric Cooperative Corporation

Act, the Nebraska Power Review Board or its successor shall, within thirty days after the receipt of such petition, execute a certificate in duplicate setting forth a true copy of the petition and declaring that the petition has been approved.

Source: Laws 1981, LB 132, § 30; Laws 1981, LB 181, § 59; Laws 2003, LB 165, § 9.

Cross References

Electric Cooperative Corporation Act, see section 70-701.

18-2431 Power projects; certificate of approval; where filed; effect.

Upon final approval the Nebraska Power Review Board shall immediately cause one copy of the certificate to be forwarded to and filed in the office of the Secretary of State and the other one to be forwarded to and filed in the office of the county clerk of the county in which the principal place of business of the agency is located. Thereupon such agency under its designated name shall be and constitute a body politic and corporate, and the agency and its directors shall possess the powers provided by law.

Source: Laws 1981, LB 132, § 31; Laws 1981, LB 181, § 60.

18-2432 Power projects; appeal; procedure.

An appeal of any final action of the Nebraska Power Review Board pursuant to the Municipal Cooperative Financing Act may be taken to the Court of Appeals. Such appeal shall be in accordance with rules provided by law for appeals in civil cases.

Source: Laws 1981, LB 132, § 32; Laws 1981, LB 181, § 61; Laws 1991, LB 732, § 21; Laws 2003, LB 187, § 6.

18-2433 Power projects; petition for agency creation; amendment; approval procedure.

(1) A petition for the creation of an agency which intends to engage in the operation of power projects or the generation or supply of electrical energy may be amended as provided in this section. Upon a majority vote of the directors, an agency may amend its petition for creation or may amend its charter to provide for a change in the general description of the nature of the business in which the agency is engaged, upon petition to the Nebraska Power Review Board and approval by the Nebraska Power Review Board in accordance with the procedure established in sections 18-2426 to 18-2434.

(2) After notice to interested parties and a public hearing which may be held at the option of the Nebraska Power Review Board, such amendments shall be approved if the Nebraska Power Review Board determines that the statements in the petition are true and conform to public convenience and welfare, and so long as the plants, systems, and works, the operation of the same, the exercise of powers, and the assumptions of duties and responsibilities of, or on the part of, such agency, do not nullify, conflict with, or materially affect those of any other district or a corporation organized under the provisions of Chapter 70, article 6 or 8 or the Electric Cooperative Corporation Act, or those of any part of such district or corporation.

Source: Laws 1981, LB 132, § 33; Laws 1981, LB 181, § 62; Laws 2003, LB 165, § 10.

Cross References

Electrical Cooperative Corporation Act, see section 70-701.

18-2434 Power projects; certificate of approval; proof of agency's establishment.

In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract of the agency, the agency shall be conclusively deemed to have been established, except as against the state, in accordance with sections 18-2401 to 18-2485 upon proof of the issuance of the certificate issued by the Nebraska Power Review Board. A copy of such certificate duly certified by the Nebraska Power Review Board shall be admissible in evidence in any such suit, action, or proceeding and shall be conclusive proof of the filing and contents thereof.

Source: Laws 1981, LB 132, § 34; Laws 1981, LB 181, § 63.

18-2435 Director; removal; certificate of appointment; term; vacancy; expenses.

A director may be removed for any cause at any time by the governing body of the municipality for which such director acts. A certificate of the appointment or reappointment of any director shall be filed with the clerk of the municipality for which such director acts and such certificate shall be conclusive evidence of the due and proper appointment of such director. Each director shall serve for a term of three years or until his or her successor has been appointed and has qualified in the same manner as the original appointment. A director shall be eligible for reappointment upon the expiration of his or her term. A vacancy shall be filled for the balance of the unexpired term of the person who has ceased to hold office in the same manner as the original appointment. A director shall receive no compensation for his or her services but shall be entitled to the necessary expenses, including travel expenses, incurred in the discharge of his or her official duties, including mileage at the rate provided in section 81-1176 for state employees.

Source: Laws 1981, LB 132, § 35; Laws 1984, LB 686, § 2.

18-2436 Directors; number; voting; quorum; meetings.

Each participating municipality shall be entitled to appoint one director, but with the approval of each of the participating municipalities as evidenced by an ordinance or resolution of the governing body thereof, an agency's bylaws may contain a provision entitling any of the participating municipalities to appoint more than one director and specifying the number of directors to be appointed by each of the participating municipalities of the agency. The number of directors may be increased or decreased from time to time by an amendment to the bylaws approved by each of the participating municipalities as evidenced by an ordinance or resolution of the governing body thereof. Each participating municipality shall at all times be entitled to appoint at least one director. Each director shall be entitled to one vote, but with the approval of each of the participating municipalities as evidenced by an ordinance or resolution of the governing body thereof, an agency's bylaws may contain a provision entitling any director or directors to cast more than one vote and specifying the number or numbers of votes such director or directors may cast. Unless the bylaws of the agency shall require a larger number, a quorum of the board shall be

constituted for the purpose of conducting the business and exercising the powers of the agency and for all other purposes when directors are present who are entitled to cast a majority of the total votes which may be cast by all of the board's directors. Action may be taken upon a vote of a majority of the votes which the directors present are entitled to cast unless the bylaws of the agency shall require a larger number. The manner of scheduling regular board meetings and the method of calling special board meetings, including the giving or waiving notice thereof, shall be as provided in the bylaws. Such meetings may be held by any means permitted by the Open Meetings Act.

Source: Laws 1981, LB 132, § 36; Laws 2007, LB199, § 6.

Cross References

Open Meetings Act, see section 84-1407.

18-2437 Board; elect officers; executive director; employees.

The directors shall elect a chairperson and vice-chairperson of the board from among the directors. The agency shall have power to employ an executive director. The directors shall elect a secretary who shall either be from among the directors or the executive director. The agency may employ legal counsel for such legal services as it may require. The agency may also employ technical experts and such other officers, agents, and employees as it may require and shall determine their qualifications, duties, compensation, and term of office. The board may delegate to one or more of the agency's employees or agents such powers and duties as the board may deem proper.

Source: Laws 1981, LB 132, § 37.

18-2438 Board; create committees; powers; meetings.

The board of an agency may create an executive committee the composition of which shall be set forth in the bylaws of the agency. The executive committee shall have and exercise the power and authority of the board during intervals between the board's meetings in accordance with the board's bylaws, rules, motions, or resolutions. The terms of office of the members of the executive committee and the method of filling vacancies shall be fixed by the bylaws of the agency. The board may also create one or more committees to which the board may delegate such powers and duties as the board shall specify. In no event shall any committee be empowered to authorize the issuance of bonds. The membership and voting requirements for action by a committee shall be specified by the board. An agency which contracts with municipalities outside the State of Nebraska may hold meetings outside the State of Nebraska if such meetings are held only in such contracting municipalities. Meetings of any committee which is a public body for purposes of the Open Meetings Act may be held by any means permitted by the act.

Source: Laws 1981, LB 132, § 38; Laws 1984, LB 686, § 3; Laws 1987, LB 324, § 4; Laws 2001, LB 250, § 1; Laws 2007, LB199, § 7.

Cross References

Open Meetings Act, see section 84-1407.

18-2439 Agency; dissolution; withdrawal of municipality; outstanding bonds, how treated; assets, how distributed.

An agency shall be dissolved upon the adoption, by the governing bodies of at least half of the participating municipalities, of an ordinance or resolution setting forth the determination that the need for such municipality to act cooperatively through an agency no longer exists. An agency shall not be dissolved so long as the agency has bonds outstanding, unless provision for full payment of such bonds and interest thereon, by escrow or otherwise, has been made pursuant to the terms of such bonds or the ordinance, resolution, trust indenture, or security instrument securing such bonds. If the governing bodies of one or more, but less than a majority, of the participating municipalities adopt such an ordinance or resolution, such municipalities shall be permitted to withdraw from participation in the agency, but such withdrawal shall not affect the obligations of such municipality pursuant to any contracts or other agreements with such agency. Such withdrawal shall not impair the payment of any outstanding bonds or interest thereon. In the event of the dissolution of an agency, its board shall provide for the disposition, division, or distribution of the agency's assets among the participating municipalities by such means as such board shall determine, in its sole discretion, to be fair and equitable.

Source: Laws 1981, LB 132, § 39; Laws 2007, LB199, § 8.

18-2440 Agency; power to tax denied; general powers and duties.

An agency established pursuant to sections 18-2401 to 18-2485 shall constitute a political subdivision and a public body corporate and politic of this state exercising public powers separate from the participating municipalities. An agency shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a political subdivision and a public body corporate and politic, but shall not have taxing power. An agency shall have power (1) to sue and be sued, (2) to have a seal and alter the same at pleasure, or to dispense with the necessity thereof, (3) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and (4) from time to time, to make, amend, and repeal bylaws, rules, and regulations not inconsistent with sections 18-2401 to 18-2485 to carry out and effectuate its powers and purposes.

Source: Laws 1981, LB 132, § 40.

18-2441 Agency; powers; enumerated.

The powers of an agency shall include the power:

(1) To plan, develop, construct, reconstruct, operate, manage, dispose of, participate in, maintain, repair, extend, improve, or acquire by purchase, gift, lease, or otherwise, one or more projects within or outside this state and act as agent, or designate one or more other persons to act as its agent, in connection with the planning, acquisition, construction, operation, maintenance, repair, extension, or improvement of such project, except that before any power project is constructed by an agency, approval of the power project shall have been obtained from the Nebraska Power Review Board under sections 70-1012 to 70-1016;

(2) To produce, acquire, sell, and distribute commodities, including, without limitation, fuels necessary to the ownership, use, operation, or maintenance of one or more projects;

(3) To enter into franchises, exchange, interchange, pooling, wheeling, transmission, and other similar agreements;

(4) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the agency;

(5) To employ agents and employees;

(6) To contract with any person within or outside this state for the sale or transmission of any service, product, or commodity supplied, transmitted, conveyed, transformed, produced, or generated by any project, or for any interest therein or any right to capacity thereof, on such terms and for such period of time as the agency's board shall determine;

(7) To purchase, sell, exchange, produce, generate, transmit, or distribute any service, product, or commodity within and outside the state in such amounts as it shall determine to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, and to enter into agreements with any person with respect to such purchase, sale, exchange, production, generation, transmission, or distribution on such terms and for such period of time as the agency's board shall determine;

(8) To acquire, own, hold, use, lease, as lessor or lessee, sell, or otherwise dispose of, mortgage, pledge, or grant a security interest in any real or personal property, commodity, product, or service or any interest therein or right thereto;

(9) To exercise the power of eminent domain in the manner set forth in Chapter 76, article 7. No real property of the state, any municipality, or any political subdivision of the state, may be so acquired without the consent of the state, such municipality, or such subdivision;

(10) To incur debts, liabilities, or obligations including the borrowing of money and the issuance of bonds, secured or unsecured, pursuant to sections 18-2401 to 18-2485;

(11) To borrow money or accept contributions, grants, or other financial assistance from a public authority and to comply with such conditions and enter into such contracts, covenants, mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable;

(12) To fix, maintain, revise, and collect fees, rates, rents, and charges for functions, services, facilities, or commodities provided by the agency, and it shall be the mandatory duty of each agency to fix, maintain, revise, and collect such fees, rates, rents, and charges as will always be sufficient to pay all operating and maintenance expenses of the agency, to pay for costs of renewals and replacements to a project, to pay interest on and principal of, whether at maturity or upon sinking-fund redemption, any outstanding bonds or other indebtedness of the agency, and to provide, as may be required by a resolution, trust indenture, security instrument, or other agreement of the agency, for any reasonable reserves for any such expenses, costs, or debt service or for any margins or coverages over and above debt service;

(13) Subject to any agreements with holders of outstanding bonds, to invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, including the proceeds from the sale of any bonds, in such obligations, securities, and other investments as the board shall deem proper;

(14) To join and pay dues to organizations, membership in which is deemed by the board to be beneficial to the accomplishment of the agency's purposes; and

(15) To exercise any other powers which are deemed necessary and convenient to carry out sections 18-2401 to 18-2485.

Source: Laws 1981, LB 132, § 41.

18-2442 Construction and other contracts; cost estimate; sealed bids; when; exceptions.

(1) An agency shall cause estimates of the costs to be made by some competent engineer or engineers before the agency enters into any contract for:

(a) The construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement, for the use of the agency, of any:

(i) Power project, power plant, or system;

(ii) Irrigation works; or

(iii) Part or section of a project, plant, system, or works described in subdivision (i) or (ii) of this subdivision; or

(b) The purchase of any materials, machinery, or apparatus to be used in a project, plant, system, or works described in subdivision (1)(a) of this section.

(2) If the estimated cost exceeds the sum of one hundred thousand dollars, no such contract shall be entered into without advertising for sealed bids.

(3)(a) The provisions of subsection (2) of this section and sections 18-2443 and 18-2444 relating to sealed bids shall not apply to contracts entered into by an agency in the exercise of its rights and powers relating to (i) radioactive material or the energy therefrom, (ii) any technologically complex or unique equipment, (iii) equipment or supplemental labor procurement from an electric utility or from or through an electric utility alliance, or (iv) any maintenance or repair, if the requirements of subdivisions (b) and (c) of this subsection are met.

(b) A contract described in subdivision (a) of this subsection need not comply with subsection (2) of this section or sections 18-2443 and 18-2444 if:

(i) The engineer or engineers certify that, by reason of the nature of the subject matter of the contract, compliance with subsection (2) of this section would be impractical or not in the public interest;

(ii) The engineer's certification is approved by a two-thirds vote of the board; and

(iii) The agency advertises notice of its intention to enter into such contract, the general nature of the proposed work, and the name of the person to be contacted for additional information by anyone interested in contracting for such work.

(c) Any contract for which the board has approved an engineer's certificate described in subdivision (b) of this subsection shall be advertised in three issues, not less than seven days between issues, in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the agency is located, or if no newspaper is so published then in a newspaper qualified to carry legal notices having general circulation therein, and in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of its intention to enter into such contract, and any such contract shall not be entered into prior to twenty days after the last advertisement.

(4) The provisions of subsection (2) of this section and sections 18-2443 and 18-2444 shall not apply to contracts in excess of one hundred thousand dollars

entered into for the purchase of any materials, machinery, or apparatus to be used in projects, plants, systems, or works described in subdivision (1)(a) of this section when the contract does not include onsite labor for the installation thereof if, after advertising for sealed bids:

(a) No responsive bids are received; or

(b) The board of directors of such agency determines that all bids received are in excess of the fair market value of the subject matter of such bids.

(5) Notwithstanding any other provision of subsection (2) of this section or sections 18-2443 and 18-2444, an agency may, without advertising or sealed bidding, purchase replacement parts or services relating to such replacement parts for any generating unit, transformer, or other transmission and distribution equipment from the original manufacturer of such equipment upon certification by an engineer or engineers that such manufacturer is the only available source of supply for such replacement parts or services and that such purchase is in compliance with standards established by the board. A written statement containing such certification and a description of the resulting purchase of replacement parts or services from the original manufacturer shall be submitted to the board by the engineer or engineers certifying the purchase for the board's approval. After such certification, but not necessarily before the board's review, notice of any such purchase shall be published once a week for at least three consecutive weeks in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the agency is located and published in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of such purchase.

(6) Notwithstanding any other provision of subsection (2) of this section or sections 18-2443 and 18-2444, an agency may, without advertising or sealed bidding, purchase used equipment and materials on a negotiated basis upon certification by an engineer that such equipment is or such materials are in compliance with standards established by the board. A written statement containing such certification shall be submitted to the board by the engineer for the board's approval.

Source: Laws 1981, LB 132, § 42; Laws 1999, LB 566, § 1; Laws 2007, LB636, § 5.

18-2443 Construction and other contracts; bids; advertisement.

Prior to advertisement for sealed bids, plans and specifications for the proposed work or materials shall be prepared and filed at the principal office or place of business of the agency. Such advertisement shall be made in three issues, not less than seven days between issues, in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the agency is located, or if no newspaper is so published then in a newspaper qualified to carry legal notices having general circulation therein, and in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of the receiving of bids. Such advertisement shall designate the nature of the work proposed to be done or materials proposed to be purchased, that the plans and specifications therefor may be inspected at the office of the agency, giving the location

thereof, and shall designate the time within which bids shall be filed, and the date, hour, and place the same shall be opened.

Source: Laws 1981, LB 132, § 43.

18-2444 Construction and other contracts; responsible bidder; considerations; letting of contract.

The board of directors of the agency may let the contract for such work or materials to the responsible bidder who submits the lowest and best bid or, in the sole discretion of the board, all bids tendered may be rejected, and readvertisement for bids made, in the manner, form, and time as provided in section 18-2443. In determining whether a bidder is responsible, the board may consider the bidder's financial responsibility, skill, experience, record of integrity, ability to furnish repairs and maintenance services, ability to meet delivery or performance deadlines, and whether the bid is in conformance with specifications. Consideration may also be given by the board of directors to the relative quality of supplies and services to be provided, the adaptability of machinery, apparatus, supplies, or services to be purchased to the particular uses required, to the preservation of uniformity, and the coordination of machinery and equipment with other machinery and equipment already installed. No such contract shall be valid nor shall any money of the agency be expended thereunder unless advertisement and letting shall have been had as provided in sections 18-2442 to 18-2444.

Source: Laws 1981, LB 132, § 44.

18-2445 Emergencies; conditions created by war; contracting requirements inapplicable; Nebraska workers preferred; bonds; laws applicable.

(1) In the event of sudden or unexpected damage, injury, or impairment of such project, plant, works, system, or other property belonging to the agency, or an order of a regulatory body which would prevent compliance with section 18-2442, the board of directors may, in its discretion, declare an emergency, and proceed with the necessary construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement without first complying with the provisions of sections 18-2442 to 18-2444.

(2) When, by reason of disturbed or disrupted economic conditions due to war or due to the operation of laws, rules, or regulations of governmental authorities, whether enacted, passed, promulgated, or issued under or due to the emergency or necessities of war or national defense, the contracting or purchasing by the agency is so restricted, prohibited, limited, allocated, regulated, rationed, or otherwise controlled, that the letting of contracts therefor, pursuant to the requirements of such sections, is legally or physically impossible or impractical, the provisions of sections 18-2442 to 18-2444 shall not apply to such contracts or purchases.

(3) Such contract shall provide that, to the extent practicable, workers who are citizens of Nebraska shall be given preference for employment by the contractor.

(4) All provisions of section 52-118, with reference to contractors' bonds, shall be applicable and effective as to any contract let pursuant to sections 18-2401 to 18-2485.

Source: Laws 1981, LB 132, § 45.

18-2446 Funds; how expended; bonds.

(1) Money of the agency shall be paid out or expended only upon the authorization or approval of the board of directors by specific agreement, by a written contract, or by a resolution. All money of the agency shall be paid out or expended only by check, draft, warrant, or other instrument in writing, signed by the treasurer, assistant treasurer, or such other officer, employee, or agent of the agency as shall be authorized by the treasurer to sign in his or her behalf. Such authorization shall be in writing and filed with the secretary of the agency.

(2) Money of the agency paid out or expended shall be examined by the board of directors at the next regular meeting following such expenditure.

(3) In the event that there is no treasurer's bond that expressly insures the agency against loss resulting from the fraudulent, illegal, negligent, or otherwise wrongful or unauthorized acts or conduct by or on the part of any and every person authorized to sign checks, drafts, warrants, or other instruments in writing, there shall be procured and filed with the secretary of the agency, together with the written authorization filed with the secretary of the board, a surety bond, effective for protection against such loss, in such form and penal amount and with such corporate surety as shall be approved in writing by the signed endorsement thereon of any two officers of the agency other than the treasurer. The secretary shall report to the board at each meeting any such bonds filed, or any change in the status of any such bonds, since the last previous meeting of the board.

Source: Laws 1981, LB 132, § 46; Laws 2003, LB 165, § 11.

18-2447 Purchase of services by municipality; terms and conditions.

Notwithstanding any other provision of Nebraska law, any municipality may enter into agreements with an agency for the purchase of water, electric power and energy, energy conservation services or devices, energy sources or fuels, sewerage services, or solid waste disposal services whereby the purchasing municipality is obligated to make payments in amounts which shall be sufficient to pay all operating and maintenance expenses of the agency, to pay for costs of renewals and replacements to a project, to pay interest on and principal of, whether at maturity or upon sinking-fund redemption, any outstanding bonds or other indebtedness of the agency, and to provide, as may be required by any resolution, trust indenture, security instrument, or other agreement of the agency, for any reasonable reserves for any such expenses, costs, or debt service or for any margins or coverages over and above debt service. A purchase agreement may contain such other terms and conditions as the agency and the purchasing municipality may determine, including provisions whereby the purchasing municipality is obligated to make payments for water, electric power and energy, energy conservation services or devices, the acquisition of energy sources or fuel, sewerage service, or solid waste disposal irrespective of whether water, electric power and energy, energy conservation services or devices, energy sources or fuel, sewerage service, or solid waste disposal is provided or produced or delivered to the purchaser or whether any project contemplated by any purchase agreement is completed, operable, or operating, and notwithstanding suspension, interruption, interference, reduction, or curtailment of the output or services of such project. A purchase agreement may be for a term covering the life of a project or for any other

term, or for an indefinite period. A purchase agreement may provide that if one or more of the purchasing municipalities shall default in the payment of its obligations under any purchase agreement, then some or all of the remaining municipalities which also have purchase agreements with the same agency shall be required to accept and pay for, and shall be entitled proportionately to use or otherwise dispose of, the output, devices, fuel, or services undertaken to be purchased by such defaulting municipality.

Source: Laws 1981, LB 132, § 47.

18-2448 Purchase agreement; obligations of nondefaulting municipality; contracting municipality; duties; contributions authorized.

(1) The obligations of a nondefaulting municipality under a purchase agreement with an agency or arising out of the default by any other municipality with respect to a purchase agreement shall constitute special and limited obligations of the nondefaulting municipality payable solely from the revenue and other money derived by the nondefaulting municipality from its municipal utility with respect to which the purchase agreement relates and shall not be construed as constituting a debt of the nondefaulting municipality. If and to the extent provided in the purchase agreement, such obligations shall be treated as expenses of operating a municipal utility owned and operated by the nondefaulting municipality. It shall be the mandatory duty of any municipality entering into any contract or purchase agreement with an agency to fix, maintain, revise, and collect fees, rates, rents, and charges for functions, services, facilities, or commodities, furnished to its customers and users by and through its municipal utility as will be sufficient to pay the cost of operating and maintaining its municipal utility, renewals, or replacements thereto, including all amounts due and payable under any contract or purchase agreement with an agency, the interest on and principal of any outstanding bonds or other indebtedness of the municipality, whether at maturity or upon sinking-fund redemption, which are payable from the revenue of its municipal utility, and to provide, as may be required by any resolution, ordinance, trust indenture, security instrument, or other agreement of the agency, for any reasonable reserves for operating and maintenance expenses and for any margins or coverages over and above debt service.

(2) The purchase agreement also may provide for payments in the form of contributions to defray the cost of any purchase permitted by the purchase agreement and as advances for any such purchase subject to repayment by the agency.

Source: Laws 1981, LB 132, § 48.

18-2449 Sale of excess capacity; joint projects; authorized.

(1) An agency may sell or exchange excess capacity of any project or any excess water, electrical energy or power, energy source, or fuel, produced or owned by the agency not required by any of the participating municipalities. An agency may make such sale to any person for such consideration and for such period and upon such terms and conditions as the agency may determine, except that no such agency shall sell or exchange excess capacity of power or energy at retail, within the State of Nebraska.

(2) Notwithstanding any other provision of sections 18-2401 to 18-2485 or any other statute, nothing shall prohibit an agency from undertaking any project in conjunction with or owning any project jointly with any person.

Source: Laws 1981, LB 132, § 49.

18-2450 Power project agencies; sections applicable.

The provisions of sections 18-2451 to 18-2462 shall apply only to agencies created pursuant to sections 18-2426 to 18-2434 and shall not be construed to create any exceptions to the provisions of section 18-2449.

Source: Laws 1981, LB 132, § 50.

18-2451 Power project agencies; books and records; open to public; annual audit.

The books and records of an agency created pursuant to sections 18-2426 to 18-2434 shall be public records and shall be kept at the principal place of business of such agency. The agency books and records shall be open to public inspection at reasonable times and upon reasonable notice. The agency shall annually cause to be filed with the Auditor of Public Accounts an audit of the books, records, and financial affairs of the agency. Such audit shall be made by a certified public accountant or firm of such accountants selected by the agency and shall be conducted in the manner prescribed in section 84-304.01. When the audit has been completed, written copies of the audit shall be placed and kept on file at the principal place of business of the agency and shall be filed with the Auditor of Public Accounts and the Nebraska Power Review Board within one hundred eighty days after December 31 of each year. If any agency created pursuant to sections 18-2426 to 18-2434 fails to file a copy of an audit within the time prescribed in this section, the books, records, and financial affairs of such agency shall, within one hundred eighty days after the close of the fiscal year of the agency, be audited by a certified public accountant or firm of accountants selected by the Auditor of Public Accounts. The cost of the audit shall be paid by the agency.

Source: Laws 1981, LB 132, § 51; Laws 1981, LB 181, § 64; Laws 1993, LB 310, § 7; Laws 2004, LB 969, § 11.

18-2452 Power project agency; provisions applicable.

Any agency created pursuant to sections 18-2426 to 18-2434 shall be considered to be a governmental subdivision within the meaning of section 70-625.02 and shall be considered to be a generating power agency within the meaning of sections 70-626.01 to 70-626.05.

Source: Laws 1981, LB 132, § 52.

18-2453 Power project agency; electrical systems; powers and duties.

Subject to the limitations of the petition for its creation and all amendments thereto, an agency may own, construct, reconstruct, purchase, lease, or otherwise acquire, improve, extend, manage, use, or operate any electric light and power plants, lines, and systems, either within or beyond, or partly within and partly beyond, the boundaries of the participating municipalities, and may engage in, transact business, or enter into any kind of contract or arrangement with any person, firm, corporation, state, county, city, village, governmental

subdivision or agency, the United States, or any officer, department, bureau, or agency thereof, any corporation organized by federal law, or any body politic or corporate, for any of the purposes enumerated in this section, or for or incident to the exercise of any one or more of the powers enumerated in this section, or for the generation, distribution, transmission, sale, or purchase of electrical energy for lighting, power, heating, and any and every other useful purpose whatsoever, and for any and every service involving, employing, or in any manner pertaining to the use of, electrical energy, by whatever means generated or distributed, or for the financing or payment of the cost and expense incident to the acquisition or operation of any such power plant or system, or incident to any obligation or indebtedness entered into or incurred by the agency. In the case of the acquisition, by purchase, lease, or any other contractual obligation, of an existing electric light and power plant, lines, or system, from any person, firm, association, or private corporation by any such agency, a copy of the proposed contract shall be filed with the Nebraska Power Review Board and open to public inspection and examination for a period of thirty days before such proposed contract may be signed, executed, or delivered, and such proposed contract shall not be valid for any purpose and no rights may arise thereunder until after such period of thirty days has expired.

Source: Laws 1981, LB 132, § 53; Laws 1981, LB 181, § 65.

18-2454 Power project agency; irrigation works; powers.

Subject to the limitations of the petition for its creation and all amendments thereto, an agency may own, construct, reconstruct, improve, purchase, lease, or otherwise acquire, extend, manage, use, or operate any irrigation works, as defined in section 70-601, either within or beyond, or partly within and partly beyond, the boundaries of the participating municipalities, and any and every kind of property, personal or real, necessary, useful, or incident to such acquisition, extension, management, use, and operation, whether the same be independent of or in connection or conjunction with an electric light and power business, in whole or in part. In connection with the powers enumerated in this section, such agency shall have the right and power to enter into any contract, lease, agreement, or arrangement with any state, county, city, village, governmental or public corporation or association, person, public or private firm or corporation, the United States, or any officer, department, bureau or agency thereof, or any corporation organized under federal law for the purpose of exercising or utilizing any one or more of the powers enumerated in this section, or for the sale, leasing, or otherwise furnishing or establishing, water rights, water supply, water service, or water storage, for irrigation or flood control, or for the financing or payment of the cost and expenses incident to the construction, acquisition, or operation of such irrigation works, or incident to any obligation or liability entered into or incurred by such agency.

Source: Laws 1981, LB 132, § 54.

18-2455 Power project agency; radioactive material; powers.

In addition to all other rights and powers which may be possessed by an agency under the petition for its creation and all amendments thereto or by statute, any such agency which has radioactive material available to it in association with facilities constructed in connection with the production of electrical energy shall have the power to use, sell, lease, transport, dispose of,

furnish, or make available under contract or otherwise to any person, firm, corporation, state, county, city, village, governmental subdivision or agency, the United States or any officer, department, bureau or agency thereof, any corporation organized by federal law, or any body politic or corporate any such radioactive material or the energy therefrom; to own, operate, construct, reconstruct, purchase, remove, lease, or otherwise acquire, improve, extend, manage, use, or operate any facilities or any property, real or personal, to engage in or transact business, or enter into any kind of contract or arrangement with anyone, for any of the purposes enumerated in this section, or for or incident to the exercise of any one or more of the powers enumerated in this section, and for any and every service involving, employing, or in any manner pertaining to the use of radioactive material or the energy therefrom; or for the financing or payment of the cost and expense incident to the acquisition, construction, reconstruction, improvement, or operation of any such facilities or property, real or personal, or incident to any obligation or indebtedness entered or incurred by any such agency, for any of the purposes enumerated in this section.

Source: Laws 1981, LB 132, § 55.

18-2456 Power project agency; additional powers.

In addition to the rights and powers enumerated in sections 18-2450 to 18-2462, and in no manner limiting or restricting the same, such agency shall be deemed to be and shall have and exercise each and all of the rights and powers of a public electric light and power district or public power district within the meaning of sections 70-501 to 70-503.

Source: Laws 1981, LB 132, § 56.

18-2457 Power project agency; joint exercise of powers; agreement; agent; liabilities; sale, lease, merger, or consolidation; procedure.

(1) Such agency shall have and may exercise any one or more of the powers, rights, privileges, and franchises mentioned in sections 70-625 to 70-628, either alone or jointly with one or more public power districts. In any joint exercise of powers, rights, privileges, and franchises with respect to the construction, operation, and maintenance of electric generation or transmission facilities, each entity shall own an undivided interest in such facility and be entitled to the share of the output or capacity therefrom attributable to its undivided interest. Each entity may enter into an agreement or agreements with respect to any electric generation or transmission facility with other entities participating therein, and any such agreement shall contain such terms, conditions, and provisions consistent with the provisions of this section as the board of directors of the entity shall deem to be in the interests of the entity.

(2) The agreement may include, but not be limited to, (a) provisions for the construction, operation, and maintenance of an electric generation or transmission facility by any one of the participating entities, which shall be designated in or pursuant to such agreement as agent, on behalf of itself and the other participating entities or by such other means as may be determined by the participating entities, and (b) provisions for a uniform method of determining and allocating among participating entities the costs of construction, operation, maintenance, renewals, replacements, and improvements with respect to such facility. In carrying out its functions and activities as the agent with respect to

construction, operation, and maintenance of a facility, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participating entities.

(3) Notwithstanding the provisions of any other law to the contrary, pursuant to the terms of the agreement any participating agency or district may delegate its powers and duties with respect to the construction, operation, and maintenance of a facility to the participating entity acting as agent, and all actions taken by such agent in accordance with the provisions of the agreement shall be binding upon each of such participating entities without further action or approval by their respective boards of directors. The entity acting as the agent shall be required to exercise all such powers and perform its duties and functions under the agreement in a manner consistent with prudent utility practice. As used in this section, prudent utility practice shall mean any of the practices, methods, and acts at a particular time which, in the exercise of reasonable judgment in the light of the facts, including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. In no event shall anything in this section be deemed to authorize any agency or district to become liable for and to pay for any costs, expenses, or liabilities attributable to the undivided interest of any other entity participating in such electric generation or transmission facility. Any agency or district that is interested by ownership, lease, or otherwise in the operation of electric power plants, distribution systems, or transmission lines, either alone or in association with another entity, in thirteen or more counties in the state may sell, lease, combine, merge, or consolidate all or a part of its property with the property of any other agency or district.

Source: Laws 1981, LB 132, § 57.

18-2458 Power project agency; joint exercise of powers with municipalities and public agencies; authority.

It is hereby declared to be in the public interest of the State of Nebraska that agencies be empowered to participate jointly or in cooperation with municipalities and other public agencies in the establishment and operation of facilities for the generation or transmission of electric power and energy located within or outside this state in order to achieve economies and efficiencies in meeting the future electric energy needs of the people of the State of Nebraska. In furtherance of such need and in addition to but not in substitution for any other powers granted such agencies, each such agency shall have and may exercise its power and authority to plan, finance, acquire, construct, own, operate, maintain, and improve electric generation or transmission facilities located within or outside this state jointly and in cooperation with one or more other such agencies, cities, or villages of this state which own or operate electrical facilities, or municipal corporations or other governmental entities of this or other states which own or operate electrical facilities. The powers granted under this section may be exercised with respect to any electric generation or

transmission facility jointly with the powers granted under any other provision of sections 18-412.07 to 18-412.09 and 70-628.02 to 70-628.04.

Source: Laws 1981, LB 132, § 58; Laws 1988, LB 794, § 1; Laws 1997, LB 658, § 3.

18-2459 Power project agency; joint exercise of power with electric cooperatives or corporations; authority.

It is hereby declared to be in the public interest of the State of Nebraska that agencies be empowered to participate jointly or in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state in the establishment and operation of facilities for the generation or transmission of electric power and energy located within or outside this state in order to achieve economies and efficiencies in meeting the future electric energy needs of the people of the State of Nebraska. In furtherance of such end and in addition to but not in substitution for any other powers granted such agencies, each such agency shall have and may exercise its power and authority to plan, finance, acquire, construct, own, operate, maintain, and improve electric generation or transmission facilities located in this state jointly and in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state, and each agency shall have and may exercise such power and authority with respect to electric generation or transmission facilities located outside of this state jointly or in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state. The power granted under this section may be exercised with respect to any electric generation or transmission facilities jointly with the powers granted under any other provision of sections 18-412.07 to 18-412.09 and 70-628.02 to 70-628.04.

Source: Laws 1981, LB 132, § 59; Laws 1988, LB 794, § 2; Laws 1997, LB 658, § 4.

18-2460 Power project agency; joint exercise of powers; agreement; terms and conditions; agent; powers and duties; liability.

Any agency participating jointly and in cooperation with others in an electric generation or transmission facility shall own an undivided interest in such facility and be entitled to the share of the output or capacity therefrom attributable to such undivided interest. Such agency may enter into an agreement or agreements with respect to each such electric generation or transmission facility with the other participants therein, and any such agreement shall contain such terms, conditions, and provisions consistent with the provisions of sections 18-2401 to 18-2485 as the board of directors of such agency shall deem to be in the interests of such agency. The agreement may include, but not be limited to, provision for the construction, operation, and maintenance of such electric generation or transmission facility by any one of the participants, which shall be designated in or pursuant to such agreement as agent, on behalf of itself and the other participants or by such other means as may be determined by the participants and provision for a uniform method of determining and allocating among participants costs of construction, operation, maintenance, renewals, replacements, and improvements with respect to such facility. In carrying out its functions and activities as such agent with respect to construc-

tion, operation, and maintenance of such a facility, including without limitation the letting of contracts therefor, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participants. Notwithstanding the provisions of any other law to the contrary, pursuant to the terms of any such agreement in which or pursuant to which an agency, public power district, public power and irrigation district, city, or village of this state shall be designated as the agent thereunder for the construction, operation, and maintenance of such a facility, each of the participants may delegate its powers and duties with respect to the construction, operation, and maintenance of such facility to such agent, and all actions taken by such agent in accordance with the provisions of such agreement shall be binding upon each of such participants without further action or approval by their respective boards of directors or governing bodies. Such agent shall be required to exercise all such powers and perform its duties and functions under the agreement in a manner consistent with prudent utility practice. As used in this section, prudent utility practice shall mean any of the practices, methods, and acts at a particular time which, in the exercise of reasonable judgment in the light of the facts, including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. In no event shall anything in sections 18-2450 to 18-2462 be deemed to authorize any agency to become liable for and to pay for any costs, expenses, or liabilities attributable to the undivided interest of any other participant in such electric generation or transmission facility, and no funds of such agency may be used for any such purpose.

Source: Laws 1981, LB 132, § 60.

18-2461 Power project agency; restrictions on sale or mortgage of certain property; revenue; pledge; alienation to private power producers, prohibited; indebtedness; default; possession by creditors; agreements authorized.

No power plant, system, or works owned by an agency shall be sold, alienated, or mortgaged by such agency. Nothing in sections 18-2401 to 18-2485 shall prevent an agency from assigning, pledging, or otherwise hypothecating, its revenue, incomes, receipts, or profits to secure the payment of indebtedness, but the credit or funds of the State of Nebraska or any subdivision thereof shall never be pledged for the payment or settlement of any indebtedness or obligation whatever of any agency created pursuant to sections 18-2426 to 18-2434. Neither by sale under foreclosure, receivership, or bankruptcy proceedings, nor by alienation in any other manner, may the property of such an agency become the property of or come under the control of any private person, firm, or corporation engaged in the business of generating, transmitting, or distributing electricity for profit. In order to protect and safeguard the security and the rights of the purchasers or holders of revenue debentures, notes, bonds, warrants, or other evidences of indebtedness, issued by any agency created pursuant to sections 18-2426 to 18-2434, such agency may agree with the purchasers or holders that in the event of default in the payment on, or principal of, any such evidences of indebtedness or in the event of default in performance of any duty or obligation of such agency in connec-

tion therewith, such purchasers or holders, or trustees selected by them, may take possession and control of the business and property of the agency and proceed to operate the same, and to collect and receive the income thereof, and after paying all necessary and proper operating expenses and all other proper disbursements or liabilities made or incurred, use the surplus, if any, of the revenue of the agency as follows: (1) In the payment of all outstanding past-due interest on each issue of revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, so far as such net revenue will go, and paying pro rata the interest due on each issue thereof when there is not enough to pay in full all of the interest; and (2) if any sums shall remain after the payment of interest, then in the payment of the revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, which, by the terms thereof, shall be due and payable on each outstanding issue in accordance with the terms thereof, and paying pro rata when the money available is not sufficient to pay in full. When all legal taxes and charges, all arrears of interest, and all matured revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, have been paid in full, the control of the business and the possession of the property of the agency shall then be restored to such agency. The privilege granted in this section shall be a continuing one as often as the occasion therefor may arise.

Source: Laws 1981, LB 132, § 61.

18-2462 Power project agency; receivership; when authorized; lease or alienation to private person; prohibited.

The board of directors of any agency issuing revenue debentures, notes, warrants, bonds, or other evidences of indebtedness under sections 18-2461 to 18-2480 is hereby authorized and empowered to agree and contract with the purchasers or holders thereof that in the event of default in the payment of interest on, or principal of, any such revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, issued, or in the event of default in the performance of any duty or obligation under any agreement by such agency, the holder or holders of such revenue debentures, notes, warrants, bonds, or other evidences of indebtedness then outstanding, shall be entitled as a matter of right, upon application to a court of competent jurisdiction, to have appointed a receiver of the business and property of the agency including all tolls, rents, revenue, issues, income, receipts, profits, benefits, and additions derived, received, or had thereof or therefrom, with power to operate and maintain such business and property, collect, receive, and apply all revenue, income, profits, and receipts arising therefrom, and prescribe rates, tolls, and charges, in the same way and manner as the agency might do. Whenever all defaults in the payment of principal of, and interest on, such revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, and any other defaults under any agreement made by the agency, shall have been made good, such receiver shall be discharged by the court and shall therefor surrender control of the business and possession of the property in his or her hands to the agency. An agency created under sections 18-2401 to 18-2485 shall never lease or alienate the franchises, plant, or physical equipment of the agency to any private person, firm, association, or corporation for operating, or for any other purpose, except as specifically provided in sections 18-2452 to 18-2462.

Source: Laws 1981, LB 132, § 62.

18-2463 Judicial proceedings; bond not required.

No bond for costs, appeal, supersedeas, injunction, or attachment shall be required of any agency organized or created pursuant to sections 18-2401 to 18-2485, or of any officer, board, head of any department, agent, or employee of such agency in any proceeding or court action in which the agency or any officer, board, head of department, agent, or employee is a party litigant in its, his, or her official capacity.

Source: Laws 1981, LB 132, § 63.

18-2464 Bonds; issuance authorized.

An agency may issue such types of bonds as its board may determine, subject only to any agreement with the holders of outstanding bonds, including bonds as to which the principal and interest are payable exclusively from all or a portion of the revenue from one or more projects, or from one or more revenue-producing contracts made by the agency with any person, or from its revenue generally, or which may be additionally secured by a pledge of any grant, subsidy, or contribution from any person, or a pledge of any income or revenue, funds, or money of the agency from any source whatsoever or a mortgage or security interest in any real or personal property, commodity, product, or service or interest therein.

Source: Laws 1981, LB 132, § 64.

18-2465 Bonds; amounts.

An agency may from time to time issue its bonds in such principal amounts as its board shall deem necessary to provide sufficient funds to carry out any of the agency's purposes and powers, including the establishment or increase of reserves, interest accrued during construction of a project and for such period thereafter as the board may determine, and the payment of all other costs or expenses of the agency incident to and necessary or convenient to carry out its purposes and powers.

Source: Laws 1981, LB 132, § 65.

18-2466 Bonds; liability; limitations.

(1) Neither the members of an agency's board nor any person executing the bonds shall be liable personally on such bonds by reason of the issuance thereof.

(2) The bonds shall not be a debt of any municipality or of this state and neither this state nor any municipality shall be liable thereon. Bonds shall be payable only out of any funds or properties of the issuing agency. Such limitations shall be plainly stated upon the face of the bonds.

Source: Laws 1981, LB 132, § 66.

18-2467 Bonds; issuance; terms; signatures.

Bonds shall be authorized by resolution of the issuing agency's board and may be issued under a resolution or under a trust indenture or other security instrument in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in

such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, as such resolution, trust indenture, or other security instrument may provide, and without limitation by the provisions of any other law limiting amounts, maturities, or interest rates. Any officer authorized or designated to sign, countersign, execute, or attest any bond or any coupon may utilize a facsimile signature in lieu of his or her manual signature.

Source: Laws 1981, LB 132, § 67.

18-2468 Bonds; negotiable; sale.

(1) Except as the issuing agency's board may otherwise provide, any bond and any interest coupons thereto attached shall be fully negotiable within the meaning of and for all purposes of article 8, Uniform Commercial Code.

(2) The bonds may be sold at public or private sale as the issuing agency's board may provide and at such price or prices as such board shall determine.

Source: Laws 1981, LB 132, § 68.

18-2469 Bonds; signatures of prior officers; validity.

In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such obligations, such signatures shall nevertheless be valid and sufficient for all purposes to the same extent as if such officers had remained in office until such delivery.

Source: Laws 1981, LB 132, § 69.

18-2470 Bonds; issuance; powers; enumerated.

An agency shall have power in connection with the issuance of its bonds:

(1) To covenant as to the use of any or all of its property, real or personal;

(2) To redeem the bonds, to covenant for their redemption, and to provide the terms and conditions thereof;

(3) To covenant to charge or seek necessary approvals to charge rates, fees, and charges sufficient to meet operating and maintenance expenses of the agency, costs of renewals and replacements to a project, interest and principal payments, whether at maturity or upon sinking-fund redemption, on any outstanding bonds or other indebtedness of the agency, creation and maintenance of any reasonable reserves therefor, and to provide for any margins or coverages over and above debt service on the bonds deemed desirable for the marketability or security of the bonds;

(4) To covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity, as to the terms and conditions upon which such declaration and its consequences may be waived and as to the consequences of default and the remedies of bondholders;

(5) To covenant as to the mortgage or pledge of or the grant of any other security interest in any real or personal property and all or any part of the revenue from any project or projects or any revenue-producing contract or contracts made by the agency with any person to secure the payment of bonds, subject to such agreements with the holders of outstanding bonds as may then exist;

(6) To covenant as to the custody, collection, securing, investment, and payment of any revenue, assets, money, funds, or property with respect to which the agency may have any rights or interest;

(7) To covenant as to the purposes to which the proceeds from the sale of any bonds then or thereafter to be issued may be applied, and the pledge of such proceeds to secure the payment of the bonds;

(8) To covenant as to limitations on the issuance of any additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds;

(9) To covenant as to the rank or priority of any bonds with respect to any lien or security;

(10) To covenant as to the procedure by which the terms of any contract with or for the benefit of the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(11) To covenant as to the custody of any of its properties or investments, the safekeeping thereof, the insurance to be carried thereon, and the use and disposition of insurance proceeds;

(12) To covenant as to the vesting in a trustee or trustees, within or outside the state, of such properties, rights, powers, and duties in trust as the agency may determine;

(13) To covenant as to the appointing and providing for the duties and obligations of a paying agent or paying agents or other fiduciaries within or outside the state;

(14) To make all other covenants and to do any and all such acts and things as may be necessary, convenient, or desirable in order to secure its bonds, or in the absolute discretion of the agency tend to make the bonds more marketable, notwithstanding that such covenants, acts, or things may not be enumerated in this section; and

(15) To execute all instruments necessary or convenient in the exercise of the powers in sections 18-2401 to 18-2485 granted or in the performance of covenants or duties, which instruments may contain such covenants and provisions as any purchaser of bonds may reasonably require.

Source: Laws 1981, LB 132, § 70.

18-2471 Refunding bonds; authorized; amount.

An agency may issue and sell refunding bonds for the purpose of paying or providing for the payment of any of its bonds at or prior to maturity or upon acceleration or redemption. Refunding bonds may be issued at any time prior to or at the maturity or redemption of the refunded bonds as the agency's board deems appropriate. The refunding bonds may be issued in principal amount not exceeding an amount sufficient to pay or to provide for the payment of (1) the principal of the bonds being refunded, (2) any redemption premium thereon, (3) interest accrued or to accrue to the first or any subsequent redemption date or dates selected by the agency's board in its discretion, or to the date or dates of maturity, whichever shall be determined to be most advantageous or convenient for the agency, (4) the expenses of issuing the refunding bonds, including bond discount, and redeeming the bonds being refunded, and (5) such reserves for debt service or other capital or current expenses from the proceeds of such

refunding bonds as may be deemed necessary or convenient by the board of the issuing agency. A determination by the board that any refinancing is advantageous or necessary to the agency, or that any of the amounts provided in this section should be included in such refinancing, or that any of the bonds to be refinanced should be called for redemption on the first or any subsequent redemption date or permitted to remain outstanding until their respective dates of maturity, shall be conclusive.

Source: Laws 1981, LB 132, § 71.

18-2472 Refunding bonds; exchange for outstanding obligations.

Refunding bonds may be exchanged for and in payment and discharge of any of the outstanding obligations being refunded. The refunding bonds may be exchanged for a like, greater, or smaller principal amount of the bonds being refunded as the issuing agency's board may determine in its discretion. The holder or holders of the bonds being refunded need not pay accrued interest on the refunding bonds if and to the extent that interest is due or accrued and unpaid on the bonds being refunded and to be surrendered.

Source: Laws 1981, LB 132, § 72.

18-2473 Refunding bonds; surplus funds; how used.

To the extent not required for the immediate payment and retirement of the obligations being refunded or for the payment of expenses incurred in connection with such refunding and subject to any agreement with the holders of any outstanding bonds, principal proceeds from the sale of any refunding bonds shall be deposited in trust to provide for the payment and retirement of the bonds being refunded, payment of interest and any redemption premiums, and payment of any expenses incurred in connection with such refunding, but provision may be made for the pledging and disposition of any surplus, including, but not limited to, provision for the pledging of any such surplus to the payment of the principal of and interest on any issue or series of refunding bonds. Money in any such trust fund may be invested in direct obligations of or obligations the principal of and interest on which are guaranteed by the United States Government, or obligations of any agency or instrumentality of the United States Government, or in certificates of deposit issued by a bank, capital stock financial institution, qualifying mutual financial institution, or trust company if such certificates shall be secured by a pledge of any of such obligations having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. Nothing in this section shall be construed as a limitation on the duration of any deposit in trust for the retirement of obligations being refunded but which shall not have matured and which shall not be presently redeemable or, if presently redeemable, shall not have been called for redemption. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1981, LB 132, § 73; Laws 1989, LB 33, § 24; Laws 2001, LB 362, § 27.

18-2474 Refunding bonds; provisions governing.

The issue of refunding bonds, the manner of sale, the maturities, interest rates, form, and other details thereof, the security therefor, the rights of the

holders thereof, and the rights, duties, and obligations of the agency in respect of the same shall be governed by the provisions of sections 18-2401 to 18-2485 relating to the issue of bonds other than refunding bonds insofar as the same may be applicable.

Source: Laws 1981, LB 132, § 74.

18-2475 Bonds; provisions of sections; exclusive.

Bonds may be issued under sections 18-2401 to 18-2485 without obtaining the consent of any department, division, commission, board, bureau, or instrumentality of this state, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, or things which are specifically required therefor by sections 18-2401 to 18-2485, and the validity of and security for any bonds shall not be affected by the existence or nonexistence of any such consent or other proceedings, conditions, or things.

Source: Laws 1981, LB 132, § 75.

18-2476 Resolution or other proceeding; publication.

The board may provide for the publication of any resolution or other proceeding adopted by it pursuant to sections 18-2401 to 18-2485, in a newspaper of general circulation published in the municipality or county where the principal office or place of business of the agency is located, or if no newspaper is so published, then in a newspaper qualified to carry legal notices having general circulation therein.

Source: Laws 1981, LB 132, § 76.

18-2477 Bonds; notice of intention to issue bonds; publication; contents.

In the case of a resolution or other proceeding providing for the issuance of bonds pursuant to sections 18-2401 to 18-2485, the board may, either before or after the adoption of such resolution or other proceeding, in lieu of publishing the entire resolution or other proceeding, publish a notice of intention to issue bonds under sections 18-2401 to 18-2485, titled as such, containing:

(1) The name of the agency;

(2) The purpose of the issue, including a brief description of the project and the name of the municipalities to be serviced by the project;

(3) The principal amount of bonds to be issued;

(4) The maturity date or dates and amount or amounts maturing on such dates;

(5) The maximum rate of interest payable on the bonds; and

(6) The times and place where a copy of the form of the resolution or other proceeding providing for the issuance of the bonds may be examined, which shall be at an office of the agency, identified in the notice, during regular business hours of the agency as described in the notice and for a period of at least thirty days after the publication of the notice.

Source: Laws 1981, LB 132, § 77.

18-2478 Publication; contest board action; limitation.

For a period of thirty days after such publication any person in interest shall have the right to contest the legality of such resolution or proceeding or any

bonds which may be authorized thereby, any provisions made for the security and payment of such bonds, any contract of purchase, sale, or lease, or any contract for the supply of water, power or electricity, energy conservation services or devices, or acquisition of energy sources or fuel, or sewerage or solid waste disposal services, and after such time no one shall have any cause of action to contest the regularity, formality, or legality thereof for any cause whatsoever.

Source: Laws 1981, LB 132, § 78.

18-2479 Bonds; authorized as investments; made securities.

Bonds issued pursuant to sections 18-2401 to 18-2485 are hereby made securities in which all public officers and instrumentalities of the state and all political subdivisions, all insurance companies, trust companies, banks, savings and loan associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any officer or instrumentality of this state or any political subdivision for any purpose for which the deposit of bonds or obligations of this state or any political subdivision thereof is now or may hereafter be authorized by law.

Source: Laws 1981, LB 132, § 79.

18-2480 Bonds and property; tax exempt; when.

(1) All bonds of an agency are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempt from all taxes.

(2) The property of an agency, including any pro rata share of any property owned by an agency in conjunction with any other person, is declared to be public property of a governmental subdivision of the state. Such property and the income of an agency shall be exempt from all taxes of the state or any municipality or other political subdivision of the state and shall be exempt from all special assessments of any participating municipality if used for a public purpose.

Source: Laws 1981, LB 132, § 80; Laws 2001, LB 173, § 15.

18-2481 Legislative consent to foreign laws.

Legislative consent is hereby given to the application of the laws of other states with respect to taxation payments in lieu of taxes and the assessment thereof to any agency which has acquired an interest in a project or property situated outside the state or which owns or operates a project outside the state and to the application of regulatory and other laws of other states and of the United States to any agency in relation to the acquisition, ownership, and operation by such agency of projects situated outside this state.

Source: Laws 1981, LB 132, § 81.

18-2482 Sections, how construed.

The provisions of sections 18-2401 to 18-2485 shall be deemed to provide an additional, alternative, and complete method for the doing of the things authorized hereby and shall be deemed and construed to be supplemental and

additional to, and not in derogation of, powers conferred upon municipalities, agencies, and others by law. Insofar as the provisions of sections 18-2401 to 18-2485 are inconsistent with the provisions of any general or special law, administrative order, or regulation, the provisions of sections 18-2401 to 18-2485 shall be controlling.

Source: Laws 1981, LB 132, § 82.

18-2483 Bondholders; pledge; agreement of the state.

The State of Nebraska does hereby pledge to and agree with the holders of any bonds and with those parties who may enter into contracts with any agency or municipality under sections 18-2401 to 18-2485 that the state will not alter, impair, or limit the rights thereby vested until the bonds, together with applicable interest, are fully met and discharged and such contracts are fully performed. Nothing contained in sections 18-2401 to 18-2485 shall preclude such alteration, impairment, or limitation if and when adequate provisions shall be made by law for the protection of the holders of the bonds or persons entering into contracts with any agency or municipality. Each agency and municipality is authorized to include this pledge and undertaking for the state in such bonds or contracts.

Source: Laws 1981, LB 132, § 83.

18-2484 Sections, liberal construction.

Sections 18-2401 to 18-2485, being necessary for the welfare of the state and its inhabitants, shall be construed liberally to effect its purposes.

Source: Laws 1981, LB 132, § 84.

18-2485 Agencies; other laws applicable.

Insofar as any provisions of sections 18-2401 to 18-2485 are applicable to the formation, organization, or operation of power projects, generators, or suppliers of electric energy, all agencies created pursuant to sections 18-2401 to 18-2485 shall comply with the provisions of Chapter 70, articles 10 and 13.

Source: Laws 1981, LB 132, § 85.

ARTICLE 25

INITIATIVE AND REFERENDUM

Section
18-2501. Powers; use; provisions governing.
18-2502. Definitions, sections found.
18-2503. Circulator, defined.
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18-2505. Governing body, defined.
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18-2510.01. Residence, defined.
18-2511. Signature sheet, defined.
18-2512. Prospective petition; filing; city clerk; duties; revision; procedure; verification; effect.

Section

18-2501 Powers; use; provisions governing.

(1) The powers of initiative and referendum are hereby reserved to the qualified electors of each municipal subdivision in the state. Sections 18-2501 to 18-2537 shall govern the use of initiative to enact, and the use of referendum to amend or repeal measures affecting the governance of all municipal subdivisions in the state, except those operating under home rule charter and as specified in section 18-2537.

(2) Cities operating under home rule charter shall provide, by charter provision or ordinance, for the exercise of the powers of initiative and referendum within the cities. Nothing in sections 18-2501 to 18-2537 shall be construed to prevent such cities from adopting any or all of the provisions of sections 18-2501 to 18-2537.

Source: Laws 1982, LB 807, § 1.

18-2502 Definitions, sections found.

For purposes of sections 18-2501 to 18-2538, the definitions in sections 18-2503 to 18-2511, unless the context otherwise requires, shall apply.

Source: Laws 1982, LB 807, § 2; Laws 1984, LB 1010, § 1.

18-2503 Circulator, defined.

Circulator shall mean any person who solicits signatures for an initiative or referendum petition.

Source: Laws 1982, LB 807, § 3.

18-2504 City clerk, defined.

City clerk shall mean the city or village clerk or the municipal official in charge of elections.

Source: Laws 1982, LB 807, § 4.

18-2505 Governing body, defined.

Governing body shall mean the legislative authority of any municipal subdivision subject to sections 18-2501 to 18-2537.

Source: Laws 1982, LB 807, § 5.

18-2506 Measure, defined.

Measure shall mean an ordinance, charter provision, or resolution which is within the legislative authority of the governing body of a municipal subdivision to pass, and which is not excluded from the operation of referendum by the exceptions in section 18-2528.

Source: Laws 1982, LB 807, § 6; Laws 1984, LB 1010, § 2.

18-2507 Municipal subdivision, defined.

Municipal subdivision shall mean all cities, not operating under home rule charters, of metropolitan, primary, first, and second classes, including those functioning under the commission and city manager forms of government, and villages.

Source: Laws 1982, LB 807, § 7.

18-2508 Petition, defined.

Petition shall mean a document authorized for circulation pursuant to section 18-2512, or any copy of such document.

Source: Laws 1982, LB 807, § 8.

18-2508.01 Place of residence, defined.

Place of residence shall mean the street and number of the residence. If there is no street and number for the residence, place of residence shall mean the mailing address.

Source: Laws 1984, LB 1010, § 3.

18-2509 Prospective petition, defined.

Prospective petition shall mean a sample document containing the information necessary for a completed petition, including a sample signature sheet, which has not yet been authorized for circulation.

Source: Laws 1982, LB 807, § 9.

18-2510 Qualified electors, defined.

Qualified electors shall mean all persons registered to vote, at the time the prospective petition is filed, in the jurisdiction governed or to be governed by any measure sought to be enacted by initiative, or altered or repealed by referendum.

Source: Laws 1982, LB 807, § 10.

18-2510.01 Residence, defined.

Residence shall mean that place at which a person has established his or her home, where he or she is habitually present, and to which, when he or she departs, he or she intends to return.

Source: Laws 1984, LB 1010, § 4.

18-2511 Signature sheet, defined.

Signature sheet shall mean a sheet of paper which is part of a petition and which is signed by persons wishing to support the petition effort.

Source: Laws 1982, LB 807, § 11.

18-2512 Prospective petition; filing; city clerk; duties; revision; procedure; verification; effect.

Before circulating an initiative or referendum petition, the petitioner shall file with the city clerk a prospective petition. The city clerk shall date the prospective petition immediately upon its receipt. The city clerk shall verify that the prospective petition is in proper form and shall provide a ballot title for the initiative or referendum proposal, pursuant to section 18-2513. If the prospective petition is in proper form, the city clerk shall authorize the circulation of the petition and such authorization shall be given within three working days from the date the prospective petition was filed. If the form of the prospective petition is incorrect, the city clerk shall, within three working days from the date the prospective petition was filed, inform the petitioner of necessary changes and request that those changes be made. When the requested changes have been made and the revised prospective petition has been submitted to the city clerk in proper form, the city clerk shall authorize the circulation of the petition and such authorization shall be given within two working days from the receipt of the properly revised petition. Verification by the city clerk that the prospective petition is in proper form does not constitute an admission by the city clerk, governing body, or municipality that the measure is subject to referendum or limited referendum or that the measure may be enacted by initiative.

Source: Laws 1982, LB 807, § 12; Laws 1984, LB 1010, § 5.

18-2513 Ballot title; contents; ballots; form.

(1) The ballot title of any measure to be initiated or referred shall consist of:

(a) A briefly worded caption by which the measure is commonly known or which accurately summarizes the measure;

(b) A briefly worded question which plainly states the purpose of the measure and is phrased so that an affirmative response to the question corresponds to an affirmative vote on the measure; and

(c) A concise and impartial statement, of not more than seventy-five words, of the chief purpose of the measure.

(2) The ballots used when voting on an initiative or referendum proposal shall contain the entire ballot title. Proposals for initiative and referendum shall be submitted on separate ballots and the ballots shall be printed in lowercase ten-point type, except that the caption shall be in boldface type. All initiative and referendum measures shall be submitted in a nonpartisan manner without indicating or suggesting on the ballot that they have or have not been approved or endorsed by any political party or organization.

Source: Laws 1982, LB 807, § 13; Laws 1984, LB 1010, § 6.

18-2514 Petitions; form; Secretary of State; duties; copies.

The Secretary of State shall design the form to be used for initiative and referendum petitions. The petitions shall conform to section 32-628. These forms shall be made available to the public by the city clerk, and they shall serve as a guide for individuals preparing prospective petitions. Substantial compliance with initiative and referendum forms is required before authorization to circulate such petition shall be granted by the city clerk pursuant to section 18-2512. Chief petitioners or circulators preparing prospective petitions shall be responsible for making copies of the petition for circulation after authorization for circulation has been granted.

Source: Laws 1982, LB 807, § 14; Laws 1984, LB 1010, § 7; Laws 1994, LB 76, § 499.

18-2515 Petition; contents; chief petitioners or sponsors; requirements.

(1) Each petition presented for signature must be identical to the petition authorized for circulation by the city clerk pursuant to section 18-2512.

(2) Every petition shall contain the name and place of residence of not more than three persons as chief petitioners or sponsors of the measure. The chief petitioners or sponsors shall be qualified electors of the municipal subdivision potentially affected by the initiative or referendum proposal.

(3) Every petition shall contain the caption and the statement specified in subdivisions (1)(a) and (1)(c) of section 18-2513.

(4) When a special election is being requested, such fact shall be stated on every petition.

Source: Laws 1982, LB 807, § 15; Laws 1984, LB 1010, § 9; Laws 2003, LB 444, § 1.

18-2516 Signature sheet; requirements.

Every signature sheet shall:

(1) Contain the caption required in subdivision (1)(a) of section 18-2513;

(2) Be part of a complete and authorized petition when presented to potential signatories; and

(3) Comply with the requirements of section 32-628.

Source: Laws 1982, LB 807, § 16; Laws 1984, LB 1010, § 10; Laws 1994, LB 76, § 500.

18-2517 Petition; signers and circulators; requirements.

Signers and circulators shall comply with sections 32-629 and 32-630.

Source: Laws 1982, LB 807, § 17; Laws 1984, LB 1010, § 11; Laws 1994, LB 76, § 501.

18-2518 Petition; filed; signature verification; costs; time limitation.

(1) Signed petitions shall be filed with the city clerk for signature verification. Upon the filing of a petition, a city, upon passage of a resolution by the governing body of such city, and the county clerk or election commissioner of the county in which such city is located may by mutual agreement provide that the county clerk or election commissioner shall ascertain whether the petition is signed by the requisite number of voters. The city shall reimburse the county for any costs incurred by the county clerk or election commissioner. When the verifying official has determined that one hundred percent of the necessary signatures required by sections 18-2501 to 18-2537 have been obtained, he or she shall notify the municipal subdivision's governing body of that fact, and shall immediately forward to the governing body a copy of the petition.

(2) In order for an initiative or referendum proposal to be submitted to the governing body and the voters, the necessary signatures shall be on file with the city clerk within six months from the date the prospective petition was authorized for circulation. If the necessary signatures are not obtained by such date, the petition shall be void.

Source: Laws 1982, LB 807, § 18.

Under section 18-2538, if a municipality does not bring an action for declaratory judgment to determine whether a measure is subject to limited referendum or referendum or whether a measure may be enacted by initiative until after it receives notification pursuant to this section, it shall be required to proceed with the initiative or referendum election. Sydow v. City of Grand Island, 263 Neb. 389, 639 N.W.2d 913 (2002).

18-2519 Measure; resubmission; limitation.

The same measure, either in form or in essential substance, may not be submitted to the people by initiative petition, either affirmatively or negatively, more often than once every two years. No attempt to repeal or alter an existing measure or portion of such measure by referendum petition may be made within two years from the last attempt to do the same. Such prohibition shall apply only when the subsequent attempt to repeal or alter is designed to accomplish the same, or essentially the same purpose as the previous attempt.

Source: Laws 1982, LB 807, § 19.

18-2520 Measure submitted to voters by municipal subdivision; procedure; approval.

(1) Except as provided in subsection (2) of this section, the executive officer and governing body of a municipal subdivision may at any time, by resolution, provide for the submission to a direct vote of the electors of any measure pending before it, passed by it, including an override of any veto, if necessary, or enacted by the electors under sections 18-2501 to 18-2538 and may provide in such resolution that such measure shall be submitted at a special election or the next regularly scheduled primary or general election. Immediately upon the passage of any such resolution for submission, the city clerk shall cause such measure to be submitted to a direct vote of the electors, at the time specified in such resolution and in the manner provided in sections 18-2501 to 18-2538 for submission of measures upon proposals and petitions filed by voters. Such matter shall become law if approved by a majority of the votes cast.

(2) The executive officer and governing body of a municipal subdivision shall not submit to a direct vote of the electors the question of whether the municipal subdivision should initiate proceedings for the condemnation of a natural gas system.

Source: Laws 1982, LB 807, § 20; Laws 1984, LB 1010, § 12; Laws 2002, LB 384, § 26.

18-2521 Elections; when held; city clerk; duties; notice; form.

Elections under sections 18-2501 to 18-2538, either at a special election or regularly scheduled primary or general election, shall be called by the city clerk. Any special election to be conducted by the election commissioner or county clerk shall be subject to section 32-405.

The city clerk shall cause notice of every such election to be printed in one or more newspapers of general circulation in such municipal subdivision at least once not less than thirty days prior to such election and also posted in the office of the city clerk and in at least three conspicuous places in such municipal subdivision at least thirty days prior to such election. The notice shall be substantially as follows:

Notice is hereby given that on Tuesday, the ..... day of ..... 20...., at (identify polling place or precinct) of the city (or village) of ....., Nebraska, an election will be held at which there will be submitted to the electors of the municipality for their approval or rejection, the following measures, propositions, or issues:

. . . . . .

. . . . . .

(naming measures, propositions, or issues), which election will be open at 8 a.m. and will continue open until 8 p.m., of the same day.

(naming measures, propositions, or issues), which election will be open at 8 a.m. and will continue open until 8 p.m., of the same day.

Dated this ..... day of ..... 20.... .

.....
City (or Village)
Clerk of the City (or Village) of
....., Nebraska.

The city clerk shall make available for photocopying a copy in pamphlet form of measures initiated or referred. Such notice provided in this section shall designate where such a copy in pamphlet form may be obtained.

Source: Laws 1982, LB 807, § 21; Laws 1984, LB 1010, § 13; Laws 1994, LB 76, § 502; Laws 2003, LB 521, § 2.

18-2522 Ballots; preparation; form.

All ballots for use in special elections under sections 18-2501 to 18-2538 shall be prepared by the city clerk and furnished by the governing body, unless the governing body contracts with the county for such service, and shall be in form the same as provided by law for election of the executive officer and governing body of such municipal subdivision. When ordinances under such sections are submitted to the electors at a regularly scheduled primary or general election,

they shall be placed upon the official ballots as provided in sections 18-2501 to 18-2538.

Source: Laws 1982, LB 807, § 22; Laws 1984, LB 1010, § 14.

18-2523 Initiative powers; scope.

(1) The power of initiative allows citizens the right to enact measures affecting the governance of each municipal subdivision in the state. An initiative proposal shall not have as its primary or sole purpose the repeal or modification of existing law except if such repeal or modification is ancillary to and necessary for the adoption and effective operation of the initiative measure.

(2) An initiative shall not be effective if the direct or indirect effect of the passage of such initiative measure shall be to repeal or alter an existing law, or portion thereof, which is not subject to referendum or subject only to limited referendum pursuant to section 18-2528.

(3) The power of initiative shall extend to a measure to provide for the condemnation of an investor-owned natural gas system by a municipal subdivision when the condemnation would, if initiated by the governing body of the municipal subdivision, be governed by the provisions of the Municipal Natural Gas System Condemnation Act.

(4) An initiative measure to provide for the condemnation of an investor-owned natural gas system by a municipal subdivision shall be a measure to require the municipal subdivision to initiate and pursue condemnation proceedings subject to the provisions of the Municipal Natural Gas System Condemnation Act.

Source: Laws 1982, LB 807, § 23; Laws 2002, LB 384, § 27.

Cross References

Municipal Natural Gas System Condemnation Act, see section 19-4624.

18-2524 Initiative petition; failure of municipal governing body to pass; effect; regular or special election.

Whenever an initiative petition bearing signatures equal in number to at least fifteen percent of the qualified electors of a municipal subdivision has been filed with the city clerk and verified pursuant to section 18-2518, it shall be the duty of the municipal subdivision's governing body to consider passage of the measure contained in the petition, including an override of any veto, if necessary. If the governing body fails to pass the measure without amendment, including an override of any veto, if necessary, within thirty days from the date it received notification pursuant to section 18-2518, the city clerk shall cause the measure to be submitted to a vote of the people at the next regularly scheduled primary or general election held within the municipal subdivision. If the governing body desires to submit the measure to a vote of the people at a special election prior to the next regularly scheduled primary or general election held within the municipal subdivision, the governing body shall, by resolution, direct the city clerk to cause the measure to be submitted at a special election. Such resolution shall not be subject to referendum or limited referendum.

Source: Laws 1982, LB 807, § 24; Laws 1984, LB 1010, § 15.

18-2525 Initiative petition; request for special election; failure of municipal governing body to pass; effect.

Whenever an initiative petition bearing signatures equal in number to at least twenty percent of the qualified electors of a municipal subdivision, which petition requests that a special election be called to submit the initiative measure to a vote of the people, has been filed with the city clerk and verified pursuant to section 18-2518, it shall be the duty of the municipal subdivision's governing body to consider passage of the measure contained in the petition, including an override of any veto, if necessary. If the governing body fails to pass the measure, without amendment, including an override of any veto, if necessary, within thirty days from the date it received notification pursuant to section 18-2518, the city clerk shall cause the measure to be submitted to a vote of the people at a special election called for such purpose. Subject to the provisions of section 18-2521, the date of such election shall not be less than thirty nor more than sixty days from the date the governing body received notification pursuant to section 18-2518.

Source: Laws 1982, LB 807, § 25; Laws 1984, LB 1010, § 16; Laws 1994, LB 76, § 503.

18-2526 Adopted initiative measure; when effective; amendment or repeal; restrictions.

If a majority of the voters voting on the initiative measure shall vote in favor of such measure, it shall become a valid and binding measure of the municipal subdivision thirty days after certification of the election results, unless the governing body by resolution orders an earlier effective date or the measure itself provides for a later effective date, which resolution shall not be subject to referendum or limited referendum. A measure passed by such method shall not be amended or repealed except by two-thirds majority of the members of the governing body. No such attempt to amend or repeal shall be made within one year from the passage of the measure by the electors.

Source: Laws 1982, LB 807, § 26; Laws 1984, LB 1010, § 17.

18-2527 Referendum powers; scope.

The power of referendum allows citizens the right to repeal or amend existing measures, or portions thereof, affecting the governance of each municipal subdivision in the state.

Source: Laws 1982, LB 807, § 27.

18-2528 Referendum; measures excluded; measures subject to limited referendum; procedure.

(1) The following measures shall not be subject to referendum or limited referendum:

(a) Measures necessary to carry out contractual obligations, including, but not limited to, those relating to the issuance of or provided for in bonds, notes, warrants, or other evidences of indebtedness, for projects previously approved by a measure which was, or is, subject to referendum or limited referendum or previously approved by a measure adopted prior to July 17, 1982;

(b) Measures relating to any industrial development projects, subsequent to measures giving initial approval to such projects;

(c) Measures adopting proposed budget statements following compliance with procedures set forth in the Nebraska Budget Act;

(d) Measures relating to the immediate preservation of the public peace, health, or safety which have been designated as urgent measures by unanimous vote of those present and voting of the municipal subdivision's governing body and approved by its executive officer;

(e) Measures relating to projects for which notice has been given as provided for in subsection (4) of this section and for which a sufficient referendum petition was not filed within the time limit stated in such notice or which received voter approval after the filing of such petition;

(f) Resolutions directing the city clerk to cause measures to be submitted to a vote of the people at a special election as provided in sections 18-2524 and 18-2529;

(g) Resolutions ordering an earlier effective date for measures enacted by initiative as provided in section 18-2526;

(h) Measures relating to any facility or system adopted or enacted pursuant to the Integrated Solid Waste Management Act by municipalities and which are necessary to carry out contractual obligations provided for in previously issued bonds, notes, warrants, or other evidence of indebtedness;

(i) Measures that amend, supplement, change, modify, or repeal a zoning regulation, restriction, or boundary and are subject to protest as provided in section 14-405 or 19-905;

(j) Measures relating to personnel issues, including, but not limited to, establishment, modification, or elimination of any personnel position, policy, salary, or benefit and any hiring, promotion, demotion, or termination of personnel; and

(k) Measures relating to matters subject to the provisions of the Municipal Natural Gas System Condemnation Act.

(2) The following measures shall be subject to limited referendum:

(a) Measures in furtherance of a policy of the municipal subdivision or relating to projects previously approved by a measure which was subject to referendum or which was enacted by initiative or has been approved by the voters at an election, except that such measures shall not be subject to referendum or limited referendum for a period of one year after any such policy or project was approved at a referendum election, enacted by initiative, or approved by the voters at an election;

(b) Measures relating to the acquisition, construction, installation, improvement, or enlargement, including the financing or refinancing of the costs, of public ways, public property, utility systems, and other capital projects and measures giving initial approval for industrial development projects;

(c) Measures setting utility system rates and charges, except for measures necessary to carry out contractual obligations provided for in previously issued bonds, notes, warrants, or other evidences of indebtedness, and pay rates and salaries for municipal subdivision employees other than the members of the governing body and the executive officer; and

(d) Measures relating to any facility or system adopted or enacted pursuant to the Integrated Solid Waste Management Act by municipalities except for

measures necessary to carry out contractual obligations provided for in previously issued bonds, notes, warrants, or other evidence of indebtedness.

(3) Measures subject to limited referendum shall ordinarily take effect thirty days after their passage by the governing body, including an override of any veto, if necessary. Referendum petitions directed at measures subject to limited referendum shall be filed for signature verification pursuant to section 18-2518 within thirty days after such measure's passage by the governing body, including an override of any veto, if necessary, or after notice is first published pursuant to subdivision (4)(c) of this section. If the necessary number of signatures as provided in section 18-2529 or 18-2530 has been obtained within the time limitation, the effectiveness of the measure shall be suspended unless approved by the voters.

(4) For any measure relating to the acquisition, construction, installation, improvement, or enlargement of public ways, public property, utility systems, or other capital projects or any measure relating to any facility or system adopted or enacted pursuant to the Integrated Solid Waste Management Act, a municipality may exempt all subsequent measures relating to the same project from the referendum and limited referendum procedures provided for in sections 18-2501 to 18-2537 by the following procedure:

(a) By holding a public hearing on the project, the time and place of such hearing being published at least once not less than five days prior to the date set for hearing in a newspaper of general circulation within the governing body's jurisdiction;

(b) By passage of a measure approving the project, including an override of a veto if necessary, at a meeting held on any date subsequent to the date of hearing; and

(c) After passage of such measure, including an override of a veto if necessary, by giving notice as follows: (i) For those projects for which applicable statutes require an ordinance or resolution of necessity, creating a district or otherwise establishing the project, notice shall be given for such project by including either as part of such ordinance or resolution or as part of any publicized notice concerning such ordinance or resolution a statement that the project as described in the ordinance or resolution is subject to limited referendum for a period of thirty days after the first publication of such notice and that, after such thirty-day period, the project and measures related to it will not be subject to any further right of referendum; and (ii) for projects for which applicable statutes do not require an ordinance or resolution of necessity, notice shall be given by publication of a notice concerning such projects stating in general terms the nature of the project and the engineer's estimate of costs of such project and stating that the project described in the notice is subject to limited referendum for a period of thirty days after the first publication of such notice and that, after such thirty-day period, the project and measures related to it will not be subject to any further right of referendum. The notice required by subdivision (c)(ii) of this subsection shall be published in at least one newspaper of general circulation within the municipal subdivision and shall be published not later than fifteen days after passage by the governing body, including an override of a veto, if necessary, of a measure approving the project. The right of a municipal subdivision to hold such a hearing prior to passage of the measure by the governing body and give such notice after passage of such measure by the governing body to obtain exemption for any

particular project in a manner described in this subsection is optional, and no municipal subdivision shall be required to hold such a hearing or give such notice for any particular project.

(5) Nothing in subsections (2) and (4) of this section shall be construed as subjecting to limited referendum any measure related to matters subject to the provisions of the Municipal Natural Gas System Condemnation Act.

(6) All measures, except as provided in subsections (1), (2), and (4) of this section, shall be subject to the referendum procedure at any time after such measure has been passed by the governing body, including an override of a veto, if necessary, or enacted by the voters by initiative.

Source: Laws 1982, LB 807, § 28; Laws 1984, LB 1010, § 18; Laws 1992, LB 1257, § 65; Laws 1994, LB 76, § 504; Laws 2000, LB 582, § 1; Laws 2002, LB 384, § 28.

Cross References

Integrated Solid Waste Management Act, see section 13-2001.
Municipal Natural Gas System Condemnation Act, see section 19-4624.
Nebraska Budget Act, see section 13-501.

18-2529 Referendum petition; failure of municipal governing body to act; effect; special election.

Whenever a referendum petition bearing signatures equal in number to at least fifteen percent of the qualified electors of a municipal subdivision has been filed with the city clerk and verified pursuant to section 18-2518, it shall be the duty of the municipal subdivision's governing body to reconsider the measure or portion of such measure which is the object of the referendum. If the governing body fails to repeal or amend the measure or portion thereof in the manner proposed by the referendum, including an override of any veto, if necessary, within thirty days from the date the governing body receives notification pursuant to section 18-2518, the city clerk shall cause the measure to be submitted to a vote of the people at the next regularly scheduled primary or general election held within the municipal subdivision. If the governing body desires to submit the measure to a vote of the people at a special election prior to the next regularly scheduled primary or general election held within the municipal subdivision, the governing body shall, by resolution, direct the clerk to cause the measure to be submitted at a special election. Such resolution shall not be subject to referendum or limited referendum.

Source: Laws 1982, LB 807, § 29; Laws 1984, LB 1010, § 19.

18-2530 Referendum petition; request for special election; failure of municipal governing body to act; effect.

Whenever a referendum petition bearing signatures equal in number to at least twenty percent of the qualified voters of a municipal subdivision, which petition requests that a special election be called to submit the referendum measure to a vote of the people, has been filed with the city clerk and verified pursuant to section 18-2518, it shall be the duty of the municipal subdivision's governing body to reconsider the measure or portion of such measure which is the object of the referendum. If the governing body fails to repeal or amend the measure or portion thereof, in the manner proposed by the referendum, including an override of any veto, if necessary, the city clerk shall cause the measure to be submitted to a vote of the people at a special election called for

such purpose within thirty days from the date the governing body received notification pursuant to section 18-2518. Subject to the provisions of section 18-2521, the date of such special election shall not be less than thirty nor more than sixty days from the date the governing body received notification pursuant to section 18-2518.

Source: Laws 1982, LB 807, § 30; Laws 1984, LB 1010, § 20; Laws 1994, LB 76, § 505.

18-2531 Adopted referendum measure; reenactment or return to original form; restrictions; failure of referendum; effect.

If a majority of the electors voting on the referendum measure shall vote in favor of such measure, the law subject to the referendum shall be repealed or amended. A measure repealed or amended by referendum shall not be reenacted or returned to its original form except by a two-thirds majority of the members of the governing body. No such attempt to reenact or return the measure to its original form shall be made within one year of the repeal or amendment of the measure by the electors. If the referendum measure does not receive a majority vote, the ordinance shall immediately become effective or remain in effect.

Source: Laws 1982, LB 807, § 31.

18-2532 False affidavit; false oath; penalty.

Whoever knowingly or willfully makes a false affidavit or takes a false oath regarding the qualifications of any person to sign petitions under sections 18-2501 to 18-2531 shall be guilty of a Class I misdemeanor with a limit of three hundred dollars on the fine.

Source: Laws 1982, LB 807, § 32.

18-2533 Petitions; illegal acts; penalty.

Whoever falsely makes or willfully destroys a petition or any part thereof, or signs a false name thereto, or signs or files any petition knowing the same or any part thereof to be falsely made, or suppresses any petition, or any part thereof, which has been duly filed, pursuant to sections 18-2501 to 18-2531 shall be guilty of a Class I misdemeanor with a limit of five hundred dollars on the fine.

Source: Laws 1982, LB 807, § 33.

18-2534 Signing of petition; illegal acts; penalty.

Whoever signs any petition under sections 18-2501 to 18-2533, knowing that he or she is not a registered voter in the place where such petition is made, aids or abets any other person in doing any of the acts mentioned in this section, bribes or gives or pays any money or thing of value to any person directly or indirectly to induce him or her to sign such petition, or engages in any deceptive practice intended to induce any person to sign a petition, shall be guilty of a Class I misdemeanor with a limit of three hundred dollars on the fine.

Source: Laws 1982, LB 807, § 34.

18-2535 City clerk; illegal acts; penalty.

Any city clerk who willfully refuses to comply with the provisions of sections 18-2501 to 18-2531 and 18-2538 or who willfully causes unreasonable delay in the execution of his or her duties under such sections shall be guilty of a Class I misdemeanor, but imprisonment shall not be included as part of the punishment.

Source: Laws 1982, LB 807, § 35; Laws 1984, LB 1010, § 21.

18-2536 Election Act; applicability.

The Election Act, so far as applicable and when not in conflict with sections 18-2501 to 18-2531, shall apply to voting on ordinances by the registered voters pursuant to such sections.

Source: Laws 1982, LB 807, § 36; Laws 1994, LB 76, § 506.

Cross References

Election Act, see section 32-101.

18-2537 Sections; inapplicability.

Nothing in sections 18-2501 to 18-2536 shall apply to procedures for initiatives or referendums provided in sections 14-210 to 14-212 relating to metropolitan-class cities, sections 18-412 and 18-412.02 relating to municipal light and power plants, sections 70-504 and 70-650.01 relating to public power districts, and sections 80-203 to 80-205 relating to soldiers and sailors monuments.

Source: Laws 1982, LB 807, § 37.

18-2538 Declaratory judgment; procedure; effect.

The municipality or any chief petitioner may seek a declaratory judgment regarding any questions arising under Chapter 18, article 25, as it may be from time to time amended, including, but not limited to, determining whether a measure is subject to referendum or limited referendum or whether a measure may be enacted by initiative. If a chief petitioner seeks a declaratory judgment, the municipality shall be served as provided in section 25-510.02. If the municipality seeks a declaratory judgment, only the chief petitioner or chief petitioners shall be required to be served. Any action brought for declaratory judgment for purposes of determining whether a measure is subject to limited referendum or referendum, or whether a measure may be enacted by initiative, may be filed in the district court at any time after the filing of a referendum or initiative petition with the city clerk for signature verification until forty days from the date the governing body received notification pursuant to section 18-2518. If the municipality does not bring an action for declaratory judgment to determine whether the measure is subject to limited referendum or referendum, or whether the measure may be enacted by initiative until after it has received notification pursuant to section 18-2518, it shall be required to proceed with the initiative or referendum election in accordance with sections 18-2501 to 18-2537 and this section. If the municipality does file such an action prior to receiving notification pursuant to section 18-2518, it shall not be required to proceed to hold such election until a final decision has been rendered in the action. Any action for a declaratory judgment shall be governed generally by sections 25-21,149 to 25-21,164, as amended from time to time, except that only the municipality and each chief petitioner shall be required to

be made parties. The municipality, city clerk, governing body, or any of the municipality's officers shall be entitled to rely on any order rendered by the court in any such proceeding. Any action brought for declaratory judgment pursuant to this section shall be given priority in scheduling hearings and in disposition as determined by the court. When an action is brought to determine whether the measure is subject to limited referendum or referendum, or whether a measure may be enacted by initiative, a decision shall be rendered by the court no later than five days prior to the election. The provisions of this section relating to declaratory judgments shall not be construed as limiting, but construed as supplemental and additional to other rights and remedies conferred by law.

Source: Laws 1984, LB 1010, § 8.

Under this section, if a municipality does not bring an action for declaratory judgment to determine whether a measure is subject to limited referendum or referendum or whether a measure may be enacted by initiative until after it receives notification pursuant to section 18-2518, it shall be required to proceed with the initiative or referendum election. Sydow v. City of Grand Island, 263 Neb. 389, 639 N.W.2d 913 (2002).

ARTICLE 26

INFRASTRUCTURE REDEVELOPMENT

Section
18-2601. Act, how cited.
18-2602. Legislative findings.
18-2603. Terms, defined.
18-2604. Municipal Infrastructure Redevelopment Fund; created; investment.
18-2605. State Treasurer; distribute funds.
18-2606. Funds; use by municipality.
18-2607. Municipality; pledge of funds; effect.
18-2608. Bonds; state; no obligation; statement.
18-2609. Bond issuance; conditions.

18-2601 Act, how cited.

Sections 18-2601 to 18-2609 shall be known and may be cited as the Municipal Infrastructure Redevelopment Fund Act.

Source: Laws 1989, LB 683, § 2; Laws 2000, LB 968, § 6.

18-2602 Legislative findings.

The Legislature finds that the municipalities of the state face an urgent need to construct, upgrade, and develop municipal infrastructure facilities. By providing basic public facilities, the municipalities of the state provide the building blocks for economic development. Not only does the investment in infrastructure generate an immediate stream of economic activity, it also lays the groundwork for private investment that will use the facilities so provided. Municipalities in the state currently are in critical need of assistance in providing these facilities.

The Legislature determines that it is in the public interest to establish a Municipal Infrastructure Redevelopment Fund to provide funds to municipalities in the state to use to provide infrastructure facilities and to permit municipalities in the state to issue bonds secured by amounts payable from the Municipal Infrastructure Redevelopment Fund and other sources.

Source: Laws 1989, LB 683, § 3; Laws 2000, LB 968, § 7.

18-2603 Terms, defined.

For purposes of the Municipal Infrastructure Redevelopment Fund Act:

(1) Bond means any evidence of indebtedness, including, but not limited to, bonds, notes including notes issued pending long-term financing arrangements, warrants, debentures, obligations under a loan agreement or a lease-purchase agreement, or any similar instrument or obligation;

(2) Fund means the Municipal Infrastructure Redevelopment Fund;

(3) Infrastructure project means any of the following projects, or any combination thereof, to be owned or operated by a municipality: Solid waste management facilities; wastewater, storm water, and water treatment works and systems, water distribution facilities, and water resources projects, including, but not limited to, pumping stations, transmission lines, and mains and their appurtenances; hazardous waste disposal systems; resource recovery systems; airports; port facilities; buildings and capital equipment used in the operations and activities of municipal government and to provide services to the residents of the municipality; convention and tourism facilities; redevelopment projects as defined in section 18-2103; and mass transit and other transportation systems, including parking facilities and excluding public highways and bridges and municipal roads, streets, and bridges;

(4) Municipal allocation amount means, for each municipality, the amount derived by multiplying the amount to be allocated by the fraction determined by dividing the total population of the municipality by the total population of the state living in municipalities, each as determined by the most recent federal census figures certified by the Tax Commissioner as provided in section 77-3,119; and

(5) Municipality means any city of the primary class.

Source: Laws 1989, LB 683, § 4; Laws 1993, LB 726, § 8; Laws 1994, LB 1127, § 4; Laws 2000, LB 968, § 8; Laws 2003, LB 440, § 1; Laws 2005, LB 426, § 10.

18-2604 Municipal Infrastructure Redevelopment Fund; created; investment.

There is hereby created in the state treasury a cash fund to be known as the Municipal Infrastructure Redevelopment Fund. The fund shall have a separate account for each municipality in the state. Money shall be deposited into the fund pursuant to section 77-2602.

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. Investment earnings on each account shall be credited to that account.

Source: Laws 1989, LB 683, § 5; Laws 1994, LB 1066, § 13.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

18-2605 State Treasurer; distribute funds.

Five business days prior to each January 1 and July 1, the State Treasurer shall distribute the amounts on deposit in the fund by crediting the municipal allocation amount to each municipality's account and immediately disbursing

such amount to the municipality or, upon notice to the State Treasurer from the municipality, its assignee.

Source: Laws 1989, LB 683, § 6.

18-2606 Funds; use by municipality.

Money received by a municipality or credited to its account from the fund shall be used for one of the following purposes:

(1) To pay for the construction, acquisition, or equipping of infrastructure projects or portions thereof; or

(2) To pay principal, interest, premium, and costs of issuance on bonds issued by the municipality to finance the construction, acquisition, or equipping of infrastructure projects or portions thereof.

Source: Laws 1989, LB 683, § 7; Laws 2000, LB 968, § 9.

18-2607 Municipality; pledge of funds; effect.

Each municipality shall be permitted to pledge the amounts on deposit or to be deposited in its account of the fund, as and when appropriated by the Legislature, to the holders of any bonds issued by the municipality to finance the construction, acquisition, or equipping of infrastructure projects as long as the lien of such pledge does not attach until funds are actually deposited into the municipality's account, and in no event shall such a pledge be construed as an obligation of the Legislature to appropriate such funds. Any such pledge shall be valid and binding from the time when the pledge is made. The money so pledged and thereafter received by the municipality or deposited into its respective account shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the municipality, irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

Source: Laws 1989, LB 683, § 8; Laws 2000, LB 968, § 10.

18-2608 Bonds; state; no obligation; statement.

No bonds issued by any municipality which pledges funds to be deposited in its account of the fund shall constitute a debt, liability, or general obligation of this state or a pledge of the faith and credit of this state but shall be payable, to the extent payable from state revenue, solely from amounts credited to the accounts of the fund as provided by the Municipal Infrastructure Redevelopment Fund Act, as and when appropriated by the Legislature. Each bond issued by any municipality which pledges funds to be deposited in its account of the fund shall contain on the face thereof a statement that neither the faith and credit nor the taxing power of this state is pledged to the payment of the principal of or the interest on such bond.

Source: Laws 1989, LB 683, § 9; Laws 2000, LB 968, § 11.

18-2609 Bond issuance; conditions.

Any municipality may by ordinance issue bonds in one or more series for the construction or acquisition of an infrastructure project or any portion thereof and pay the principal of and interest on any such bonds by pledging funds

received from the fund. Such bonds shall have a final maturity not later than August 1, 2009, and the aggregate debt service payments and related expenses with respect to all series of such bonds for any twelve-month period during which such bonds are outstanding shall not exceed the anticipated receipts from the fund by such municipality. For purposes of this section, anticipated receipts means the amount received by the municipality from the fund for the twelve-month period immediately preceding the date of issuance of such bonds.

Any municipality which has or may issue bonds under this section may dedicate a portion of its property tax levy authority as provided in section 77-3442 to meet debt service obligations under the bonds, but only to the extent the receipts from the fund pledged to the payment of such bonds and any other money made available and used for that purpose are insufficient to pay the principal of and interest on such bonds as they mature.

Source: Laws 2000, LB 968, § 12.

ARTICLE 27

MUNICIPAL ECONOMIC DEVELOPMENT

Section

18-2701 Act, how cited.

Sections 18-2701 to 18-2738 shall be known and may be cited as the Local Option Municipal Economic Development Act.

Source: Laws 1991, LB 840, § 1; Laws 1993, LB 732, § 16; Laws 1995, LB 207, § 1; Laws 2001, LB 827, § 9.

18-2702 Legislative findings.

The Legislature finds that:

(1) There is a high degree of competition among states and municipalities in our nation in their efforts to provide incentives for businesses to expand or to locate in their respective jurisdictions;

(2) Municipalities in Nebraska are hampered in their efforts to effectively compete because of their inability under Nebraska law to respond quickly to opportunities or to raise sufficient capital from local sources to provide incentives for the provision of new services or business location or expansion decisions which are tailored to meet the needs of the local community;

(3) The ability of a municipality to encourage the provision of new services or business location and expansion has a direct impact not only upon the economic well-being of the community and its residents but upon the whole state as well; and

(4) There is a need to provide Nebraska municipalities with the opportunity of providing assistance to business enterprises in their communities, whether for expansion of existing operations, the creation of new businesses, or the provision of new services, by the use of funds raised by local taxation when the voters in the municipality determine that it is in the best interest of their community to do so.

Source: Laws 1991, LB 840, § 2; Laws 2001, LB 827, § 10.

18-2703 Definitions, where found.

For purposes of the Local Option Municipal Economic Development Act, the definitions found in sections 18-2703.01 to 18-2709 shall be used.

Source: Laws 1991, LB 840, § 4; Laws 2001, LB 827, § 11.

18-2703.01 Advanced telecommunications capability, defined.

Advanced telecommunications capability shall mean high-speed, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

Source: Laws 2001, LB 827, § 12.

18-2704 City, defined.

City shall mean any city of the metropolitan class, city of the primary class, city of the first class, city of the second class, or village, including any city operated under a home rule charter. City shall also include any group of two or more cities acting in concert under the terms of the Interlocal Cooperation Act or Joint Public Agency Act by means of a properly executed agreement.

Source: Laws 1991, LB 840, § 5; Laws 1999, LB 87, § 64.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

18-2705 Economic development program, defined.

Economic development program shall mean any project or program utilizing funds derived from local sources of revenue for the purpose of providing direct or indirect financial assistance to a qualifying business or the payment of related costs and expenses or both, without regard to whether that business is identified at the time the project or program is initiated or is to be determined by specified means at some time in the future. An economic development program may include, but shall not be limited to, the following activities: Direct loans or grants to qualifying businesses for fixed assets or working capital or both; loan guarantees for qualifying business; grants for public works improvements which are essential to the location or expansion of, or the provision of new services by, a qualifying business; grants or loans for job training; the purchase of real estate, options for such purchases, and the renewal or extension of such options; the issuance of bonds as provided for in the Local Option Municipal Economic Development Act; and payments for salaries and support of city staff to implement the economic development program or the contracting of such to an outside entity. For cities of the first and second class and villages, an economic development program may also include grants or loans for the construction or rehabilitation for sale or lease of housing for persons of low or moderate income. An economic development program may be conducted jointly by two or more cities after the approval of the program by the voters of each participating city.

Source: Laws 1991, LB 840, § 6; Laws 1993, LB 732, § 17; Laws 1995, LB 207, § 3; Laws 2001, LB 827, § 13.

18-2706 Election, defined.

Election shall mean any general election, primary election, or special election called by the city as provided by law.

Source: Laws 1991, LB 840, § 7.

18-2707 Financial institution, defined.

Financial institution shall mean a state or federally chartered bank, a capital stock state building and loan association, a capital stock federal savings and loan association, a capital stock federal savings bank, and a capital stock state savings bank.

Source: Laws 1991, LB 840, § 8; Laws 2003, LB 131, § 21.

18-2708 Local sources of revenue, defined.

Local sources of revenue shall mean the city's property tax or the city's local option sales tax.

Source: Laws 1991, LB 840, § 9.

18-2709 Qualifying business, defined.

Qualifying business shall mean any corporation, partnership, limited liability company, or sole proprietorship which derives its principal source of income from any of the following: The manufacture of articles of commerce; the conduct of research and development; the processing, storage, transport, or sale of goods or commodities which are sold or traded in interstate commerce; the sale of services in interstate commerce; headquarters facilities relating to eligible activities as listed in this section; telecommunications activities, including services providing advanced telecommunications capability; or tourism-related activities. In cities of the first and second class and villages, a business shall also be a qualifying business if it derives its principal source of income from the construction or rehabilitation of housing. In cities with a population of more than two thousand five hundred inhabitants and less than ten thousand inhabitants, a business shall also be a qualifying business if it derives its principal source of income from retail trade, except that no more than forty percent of the total revenue generated pursuant to the Local Option Municipal Economic Development Act for an economic development program in any twelve-month period and no more than twenty percent of the total revenue generated pursuant to the act for an economic development program in any five-year period, commencing from the date of municipal approval of an economic development program, shall be used by the city for or devoted to the use of retail trade businesses. For purposes of this section, retail trade shall mean a business which is principally engaged in the sale of goods or commodities to ultimate consumers for their own use or consumption and not for resale. In cities with a population of two thousand five hundred inhabitants or less, a business shall be a qualifying business even though it derives its principal source of income from activities other than those set out in this section.

If a business which would otherwise be a qualifying business employs people and carries on activities in more than one city in Nebraska or will do so at any time during the first year following its application for participation in an economic development program, it shall be a qualifying business only if, in each such city, it maintains employment for the first two years following the date on which such business begins operations in the city as a participant in its economic development program at a level not less than its average employment in such city over the twelve-month period preceding participation.

A qualifying business need not be located within the territorial boundaries of the city from which it is or will be receiving financial assistance.

Source: Laws 1991, LB 840, § 10; Laws 1993, LB 121, § 145; Laws 1993, LB 732, § 18; Laws 1994, LB 1188, § 1; Laws 1995, LB 207, § 4; Laws 2001, LB 827, § 14.

18-2710 Economic development program; proposed plan, contents.

The governing body of any city proposing to adopt an economic development program shall prepare a proposed plan for such economic development program. The proposed plan shall include:

(1) A description of the city's general community and economic development strategy;

(2) A statement of purpose describing the city's general intent and proposed goals for the establishment of the economic development program;

(3) A description of the types of businesses and economic activities that will be eligible under the program for the city's assistance;

(4) A statement specifying the total amount of money that is proposed to be directly collected from local sources of revenue by the city to finance the program, whether the city desires the authority to issue bonds pursuant to the Local Option Municipal Economic Development Act to provide funds to carry out the economic development program, the time period within which the funds from local sources of revenue are to be collected, the time period during which the program will be in existence, and a basic preliminary proposed budget for the program;

(5) A description of the manner in which a qualifying business will be required to submit an application for financial assistance, including the type of information that will be required from the business, the process that will be used to verify the information, and the steps that will be taken to insure the privacy and confidentiality of business information provided to the city;

(6) A description of the administrative system that will be established to administer the economic development program, including a description of the personnel structure that will be involved and the duties and responsibilities of those persons involved; and

(7) A description of how the city will assure that all applicable laws, regulations, and requirements are met by the city and the qualifying businesses which receive assistance.

Source: Laws 1991, LB 840, § 11; Laws 1993, LB 732, § 19.

18-2710.01 Economic development program; housing for low-income or moderate-income persons; proposed plan; contents; eligibility criteria.

(1) If the proposed economic development program involves the making of grants or loans for the construction or rehabilitation for sale or lease of housing for persons of low or moderate income, the proposed plan shall specify (a) the income levels which will qualify persons for participation in the housing program and (b) the criteria for determining the adjustments to be made to the income of persons to determine their qualification for participation. For purposes of the Local Option Municipal Economic Development Act, the city shall determine low-income and moderate-income standards for the economic development program by basing such standards upon existing federal government guidelines or standards for qualifying for any federal housing assistance program as such levels may be modified by the consideration of existing local and regional economic conditions and income levels.

(2) In establishing the criteria to be applied in determining appropriate adjustments to the income of persons seeking consideration for participation in the program pursuant to subsection (1) of this section, the city shall consider the following factors:

(a) The amount of income of the person which is available for housing needs;

(b) The size of the family to reside in each housing unit;

(c) The cost and condition of housing available in the city;

(d) Whether the person or any member of the person's family who will be residing in the housing unit is elderly, infirm, or disabled;

(e) The ability of the person to compete successfully in the private housing market and to pay the amounts the private enterprise market requires for safe, sanitary, and uncrowded housing; and

(f) Such other factors as the city determines which are particularly relevant to the conditions facing persons seeking new or rehabilitated housing in the city.

Source: Laws 1995, LB 207, § 2.

18-2711 Land purchase; creation of loan fund; additional requirements.

(1) If the proposed economic development program involves the purchase of or option to purchase land, the proposed plan shall also specify the manner in which tracts of land will be identified for purchase or option to purchase and whether or not the city proposes to use the proceeds from the future sale of such land for additional land purchases.

(2) If the proposed economic development program involves the creation of a loan fund, the proposed plan shall also specify:

(a) The types of financial assistance that will be available, stating the maximum proportion of financial assistance that will be provided to any single qualifying business and specifying the criteria that will be used to determine the appropriate level of assistance;

(b) The criteria and procedures that will be used to determine the necessity and appropriateness of permitting a qualifying business to participate in the loan fund program;

(c) The criteria for determining the time within which a qualifying business must meet the goals set for it under its participation agreement;

(d) What personnel or other assistance beyond regular city employees will be needed to assist in the administration of the loan fund program and the manner in which they will be paid or reimbursed;

(e) The investment strategies that the city will pursue to promote the growth of the loan fund while assuring its security and liquidity; and

(f) The methods of auditing and verification that will be used by the city to insure that the assistance given is used in an appropriate manner and that the city is protected against fraud or deceit in the conduct or administration of the economic development program.

Source: Laws 1991, LB 840, § 12; Laws 1993, LB 732, § 20.

18-2712 Public hearing; governing body; adopt resolution; filing.

Upon completion of the proposed plan, the governing body of the city shall schedule a public hearing at which such plan shall be presented for public comment and discussion. Following the public hearing, the governing body shall adopt the proposed plan and any amendments by resolution. At the discretion of the governing body, the resolution may include the full text of the proposed plan or it may be incorporated by reference. The resolution shall include a statement of the date at which the economic development program will be presented to the voters of the city for approval pursuant to section

18-2713 and the language of the ballot question as it will appear on the ballot. Following its adoption, a copy of the resolution and the proposed plan shall be filed with the city clerk who shall make it available for public review at city hall during regular business hours.

Source: Laws 1991, LB 840, § 13; Laws 1993, LB 732, § 21.

18-2713 Election; procedures.

Before adopting an economic development program, a city shall submit the question of its adoption to the registered voters at an election. The governing body of the city shall order the submission of the question by filing a certified copy of the resolution proposing the economic development program with the election commissioner or county clerk not later than forty-one days prior to a special election or not later than fifty days prior to a primary or general election. The question on the ballot shall briefly set out the terms, conditions, and goals of the proposed economic development program, including the length of time during which the program will be in existence, the year or years within which the funds from local sources of revenue are to be collected, the source or sources from which the funds are to be collected, the total amount to be collected for the program from local sources of revenue, and whether the city proposes to issue bonds pursuant to the Local Option Municipal Economic Development Act to provide funds to carry out the economic development program. The ballot question shall also specify whether additional funds from other noncity sources will be sought beyond those derived from local sources of revenue. In addition to all other information, if the funds are to be derived from the city's property tax, the ballot question shall state the present annual cost of the economic development program per ten thousand dollars of assessed valuation based upon the most recent valuation of the city certified to the Property Tax Administrator pursuant to section 77-1613.01. The ballot question shall state: ''Shall the city of (name of the city) establish an economic development program as described here by appropriating annually from local sources of revenue $..... for ..... years?''. If the only city revenue source for the proposed economic development program is a local option sales tax that has not yet been approved at an election, the ballot question specifications in this section may be repeated in the sales tax ballot question.

If a majority of those voting on the issue vote in favor of the question, the governing body may implement the proposed economic development program upon the terms set out in the resolution. If a majority of those voting on the economic development program vote in favor of the question when the only city revenue source is a proposed sales tax and a majority of those voting on the local option sales tax vote against the question, the governing body shall not implement the economic development program, and it shall become null and void. If a majority of those voting on the issue vote against the question, the governing body shall not implement the economic development program.

Source: Laws 1991, LB 840, § 14; Laws 1993, LB 732, § 22; Laws 1995, LB 490, § 23.

18-2714 Economic development program; established by ordinance; amendment; repeal; procedures.

(1) After approval by the voters of an economic development program, the governing body of the city shall, within forty-five days after such approval,

establish the economic development program by ordinance in conformity with the terms of such program as set out in the original enabling resolution.

(2) After the adoption of the ordinance establishing the economic development program, such ordinance shall only be amended (a) to conform to the provisions of any existing or future state or federal law or (b) after notice, at least one public hearing, and a two-thirds vote of the members of the governing body of the city, when necessary to accomplish the purposes of the original enabling resolution.

(3) The governing body of a city shall not amend the economic development program so as to fundamentally alter its basic structure or goals, either with regard to the qualifying businesses that are eligible to participate, the uses of the funds collected, or the basic terms set out in the original enabling resolution, without submitting the proposed changes to a new vote of the registered voters of the city in the manner provided for in section 18-2713.

(4) The governing body of a city may, at any time after the adoption of the ordinance establishing the economic development program, by a two-thirds vote of the members of the governing body, repeal the ordinance in its entirety and end the economic development program, subject only to the provisions of any existing contracts relating to such program and the rights of any third parties arising from those contracts. Prior to such vote by the governing body, it shall publish notice of its intent to consider the repeal and hold a public hearing on the issue. Any funds in the custody of the city for such economic development program which are not spent or committed at the time of the repeal and any funds to be received in the future from the prior operation of the economic development program shall be placed into the general fund of the city.

Source: Laws 1991, LB 840, § 15.

18-2715 Citizen advisory review committee; membership; meetings; powers; unauthorized disclosure of information; penalty.

(1) The ordinance establishing the economic development program shall provide for the creation of a citizen advisory review committee. The committee shall consist of not less than five or more than ten registered voters of the city who shall be appointed to the committee by the mayor or chairperson subject to approval by the governing body of the city. At least one member of the committee shall have expertise or experience in the field of business finance or accounting. The ordinance shall designate an appropriate city official or employee with responsibility for the administration of the economic development program to serve as an ex officio member of the committee with responsibility for assisting the committee and providing it with necessary information and advice on the economic development program.

(2) No member of the citizen advisory review committee shall be an elected or appointed city official, an employee of the city, a participant in a decision-making position regarding expenditures of program funds, or an official or employee of any qualifying business receiving financial assistance under the economic development program or of any financial institution participating directly in the economic development program.

(3) The ordinance shall provide for regular meetings of the citizen advisory review committee to review the functioning and progress of the economic development program and to advise the governing body of the city with regard

to the program. At least once in every six-month period after the effective date of the ordinance, the committee shall report to the governing body on its findings and suggestions at a public hearing called for that purpose.

(4) Members of the citizen advisory review committee, in their capacity as members and consistent with their responsibilities as members, may be permitted access to business information received by the city in the course of its administration of the economic development program, which information would otherwise be confidential (a) under section 84-712.05, (b) by agreement with a qualifying business participating in the economic development program, or (c) under any ordinance of the city providing access to such records to members of the committee and guaranteeing the confidentiality of business information received by reason of its administration of the economic development program. Such ordinance may provide that unauthorized disclosure of any business information which is confidential under section 84-712.05 shall be a Class III misdemeanor.

Source: Laws 1991, LB 840, § 16; Laws 1993, LB 732, § 23.

18-2716 Expenditures; budget.

Following the adoption of an ordinance establishing an economic development program, the amount to be expended on the program for the ensuing year or biennial period shall be fixed at the time of making the annual or biennial budget required by law and shall be included in the budget.

Source: Laws 1991, LB 840, § 17; Laws 2000, LB 1116, § 16.

18-2717 Appropriations; restrictions.

(1) No city shall appropriate from funds derived directly from local sources of revenue for all approved economic development programs, in each year during which such programs are in existence, an amount in excess of four-tenths of one percent of the taxable valuation of the city in the year in which the funds are collected.

(2) Notwithstanding the provisions of subsections (1) and (3) of this section, no city of the metropolitan or primary class shall appropriate from funds derived directly from local sources of revenue more than three million dollars for all approved economic development programs in any one year, no city of the first class shall appropriate from funds derived directly from local sources of revenue more than two million dollars for all approved economic development programs in any one year, and no city of the second class or village shall appropriate from funds derived directly from local sources of revenue more than one million dollars for all approved economic development programs in any one year.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, no city shall appropriate from funds derived directly from local sources of revenue an amount for an economic development program in excess of the total amount approved by the voters at the election or elections in which the economic development program was submitted or amended.

(4) The restrictions on the appropriation of funds from local sources of revenue as set out in subsections (1) through (3) of this section shall apply only to the appropriation of funds derived directly from local sources of revenue. Sales tax collections in excess of the amount which may be appropriated as a

result of the restrictions set out in such subsections shall be deposited in the city's economic development fund and invested as provided for in section 18-2718. Any funds in the city's economic development fund not otherwise restricted from appropriation by reason of the city's ordinance governing the economic development program or this section may be appropriated and spent for the purposes of the economic development program in any amount and at any time at the discretion of the governing body of the city subject only to section 18-2716.

(5) The restrictions on the appropriation of funds from local sources of revenue shall not apply to the reappropriation of funds which were appropriated but not expended during previous fiscal years.

Source: Laws 1991, LB 840, § 18; Laws 1992, LB 719A, § 79; Laws 1993, LB 732, § 24; Laws 2000, LB 1258, § 1.

18-2718 Economic development fund; required; use; investment; termination of program; effect; continuation of program; election.

(1) Any city conducting an economic development program shall establish a separate economic development fund. All funds derived from local sources of revenue for the economic development program, any earnings from the investment of such funds including, but not limited to, interest earnings, loan payments, and any proceeds from the sale or rental by the city of assets purchased by the city under its economic development program shall be deposited into the economic development fund. Any proceeds from the issuance and sale of bonds pursuant to the Local Option Municipal Economic Development Act to provide funds to carry out the economic development program, except as provided in section 18-2732, shall be deposited into the economic development fund. Except as provided in this section, subsection (4) of section 18-2714, and subsection (7) of section 18-2722, no money in the economic development fund shall be deposited in the general fund of the city. The city shall not transfer or remove funds from the economic development fund other than for the purposes prescribed in the Local Option Municipal Economic Development Act, and the money in the economic development fund shall not be commingled with any other city funds.

(2) Any money in the economic development fund not currently required or committed for purposes of the economic development program shall be invested as provided for in section 77-2341.

(3) In the event that the city's economic development program is terminated as provided in subsection (4) of section 18-2714 or subsection (7) of section 18-2722, the balance of money in the economic development fund not otherwise committed by contract under the program shall be deposited in the general fund of the city. Any funds received by the city by reason of the economic development program after the termination of such program shall be transferred from the economic development fund to the general fund of the city as such funds are received. The economic development fund shall not be terminated until such time as all projects and contracts related to the program have been finally completed and all funds related to them fully accounted for, with no further city action required, and after the completion of a final audit pursuant to section 18-2721.

(4) When the economic development program is terminated, the governing body of the city shall by resolution certify the amount of money to be trans-

ferred from the economic development fund to the general fund of the city and the amount that is anticipated will be received by the city between such time and the final audit of the economic development fund. The sum of those two amounts shall be divided by the number of years in which funds for the economic development program were collected from local sources of revenue. The resulting figure shall constitute the amount to be applied against the budgeted expenditures of the city during each succeeding year until all funds from the economic development program have been expended. The installments shall be used to reduce the property tax levy of the city by that amount in each year in which they are expended.

(5) If, after five full budget years following initiation of the approved economic development program, less than fifty percent of the money collected from local sources of revenue is spent or committed by contract for the economic development program, the governing body of the city shall place the question of the continuation of the city's economic development program on the ballot at the next regular election.

Source: Laws 1991, LB 840, § 19; Laws 1993, LB 732, § 25.

18-2719 Loan fund program; qualifying business; documentation required.

At the time when a qualifying business makes application to a city to participate in a loan fund program, the qualifying business shall provide to the city appropriate documentation evidencing its negotiations with one or more primary lenders and the terms upon which it has received or will receive the portion of the total financing for its activities which will not be provided by the city.

Source: Laws 1991, LB 840, § 20.

18-2720 Loan fund program; loan servicing requirements.

(1) If the economic development program involves the establishment of a loan fund, the governing body of the city shall designate an appropriate individual to assume primary responsibility for loan servicing and shall provide such other assistance or additional personnel as may be required. The individual may be an employee of the city, or the city may contract with an appropriate business or financial institution for loan servicing functions. The governing body of the city shall be provided with an account of the status of each loan outstanding, program income, and current investments of unexpended funds on a monthly basis. Program income shall mean payments of principal and interest on loans made from the loan fund and the interest earned on these funds.

(2) The individual responsible for loan servicing shall establish a separate account in a financial institution for each loan made from the loan fund. Records kept on such accounts and reports made to the governing body of the city shall include, but not be limited to, the following information: (a) The name of the borrower; (b) the purpose of the loan; (c) the date the loan was made; (d) the amount of the loan; (e) the basic terms of the loan, including the interest rate, the maturity date, and the frequency of payments; and (f) the payments made to date and the current balance due.

(3) The individual responsible for loan servicing shall monitor the status of each loan and, with the cooperation of the governing body of the city and the primary lender or lenders, take appropriate action when a loan becomes

delinquent. The governing body shall establish standards for the determination of loan delinquency, when a loan shall be declared to be in default, and what action shall be taken to deal with the default to protect the interests of the qualifying business, third parties, and the city. The governing body shall establish a process to provide for consultation, agreement, and joint action between the city and the primary lender or lenders in pursuing appropriate remedies following the default of a qualifying business in order to collect amounts owed under the loan.

Source: Laws 1991, LB 840, § 21.

18-2721 Audit.

The city shall provide for an annual, outside, independent audit of its economic development program by a qualified private auditing business. The auditing business shall not, at the time of the audit or for any period during the term subject to the audit, have any contractual or business relationship with any qualifying business receiving funds or assistance under the economic development program or any financial institution directly involved with a qualifying business receiving funds or assistance under the economic development program. The results of such audit shall be filed with the city clerk and made available for public review during normal business hours.

Source: Laws 1991, LB 840, § 22.

18-2722 Continuation of program; election; procedure.

(1) The registered voters of any city that has established an economic development program shall, at any time after one year following the original vote on the program, have the right to vote on the continuation of the economic development program. The question shall be submitted to the voters whenever petitions calling for its submission, signed by registered voters of the city in number equal to at least twenty percent of the number of persons voting in the city at the last preceding general election, are presented to the governing body of the city.

(2) Upon the receipt of the petitions, the governing body of the city shall submit the question at a special election to be held not less than thirty days nor more than forty-five days after receipt of the petitions, except that if any other election is to be held in such city within ninety days of the receipt of the petitions, the governing body may provide for holding the election on the same date.

(3) Notwithstanding the provisions of subsection (2) of this section, if two-thirds of the members of the governing body of the city vote to repeal the ordinance establishing the economic development program within fifteen days of the receipt of the petitions for an election, the economic development program shall end and the election shall not be held.

(4) The governing body shall give notice of the submission of the question of whether to continue the economic development program not more than twenty days nor less than ten days prior to the election by publication one time in one or more newspapers published in or having a general circulation in the city in which the question is to be submitted. Such notice shall be in addition to any other notice required by the election laws of the state.

(5) The question on the ballot shall generally set out the basic terms and provisions of the economic development program as required for the initial submission, except that the question shall be: ''Shall the city of (name of the city) continue its economic development program?''.

(6) A majority of the registered voters voting on the question at the election shall determine the question. The final vote shall be binding on the city, and the governing body of the city shall act within sixty days of the certification of the vote by the county clerk or the election commissioner to repeal the ordinance establishing the economic development program if a majority of the voters voting on the question vote to discontinue the program.

(7) The repeal of the ordinance and the discontinuation of the economic development program shall be subject only to the provisions of any contracts related to the economic development program and the rights of any third parties arising from those contracts existing on the date of the election. Any funds collected by the city under the economic development program and unexpended for that program on the date of its repeal and any funds received by the city on account of the operation of the economic development program thereafter shall be deposited in the general fund of the city.

Source: Laws 1991, LB 840, § 23.

18-2723 Appropriations and expenditures; exempt.

Appropriations and expenditures made by a city which are authorized by section 13-315 and made according to its provisions shall not be subject to the Local Option Municipal Economic Development Act and shall be exempt from its requirements.

Source: Laws 1991, LB 840, § 3.

18-2724 Issuance of bonds; purpose; not general obligation of city.

Any city which has received voter approval to conduct an economic development program pursuant to the Local Option Municipal Economic Development Act, which program as presented to the voters included the authority to issue bonds pursuant to the act, may from time to time issue bonds as provided in sections 18-2724 to 18-2736. Such bonds shall be in such principal amounts as the city's governing body deems necessary to provide sufficient funds to carry out any of the purposes of and powers granted pursuant to the economic development program, including the establishment or increase of reserves and the payment of all other costs or expenses of the city incident to and necessary or convenient to carry out the economic development program. Principal and interest on the bonds shall be payable from one or more sources which are to be deposited in the economic development fund pursuant to section 18-2718. The bonds shall not be a general obligation of the city or a pledge of its credit or taxing power except to the extent of the obligation of the city to contribute funds to the economic development program pursuant to the act.

Source: Laws 1993, LB 732, § 1.

18-2725 Issuance of bonds; immunity.

The members of a city's governing body and any person executing bonds under section 18-2724 shall not be liable personally on such bonds by reason of the issuance thereof.

Source: Laws 1993, LB 732, § 2.

18-2726 Issuance of bonds; authorization; form.

Bonds issued under section 18-2724 shall be authorized by resolution of the issuing city's governing body, may be issued under a resolution or under a trust indenture or other security instrument in one or more series, and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment and at such place or places, and be subject to such terms of redemption, with or without premium, as such resolution, trust indenture, or other security instrument may provide and without limitation by any other law limiting amounts, maturities, or interest rates. Any officer authorized or designated to sign, countersign, execute, or attest any bond or any coupon may utilize a facsimile signature in lieu of his or her manual signature.

Source: Laws 1993, LB 732, § 3.

18-2727 Bonds; negotiability; sale.

(1) Except as the issuing city's governing body may otherwise provide, any bond and any attached interest coupons shall be fully negotiable within the meaning of and for all purposes of article 8, Uniform Commercial Code.

(2) The bonds may be sold at public or private sale as provided by the city's governing body and at such price or prices as determined by such governing body.

Source: Laws 1993, LB 732, § 4.

18-2728 Bonds; officers' signatures; validity.

If any of the officers whose signatures appear on any bonds or coupons issued under section 18-2724 cease to be such officers before the delivery of such obligations, such signatures shall nevertheless be valid and sufficient for all purposes to the same extent as if such officers had remained in office until such delivery.

Source: Laws 1993, LB 732, § 5.

18-2729 Issuance of bonds; city covenants and powers.

Any city may in connection with the issuance of its bonds under section 18-2724:

(1) Covenant as to the use of any or all of the property, real or personal, acquired pursuant to its economic development program;

(2) Redeem the bonds, covenant for their redemption, and provide the terms and conditions of redemption;

(3) Covenant to charge or seek necessary approval to charge rates, fees, and charges sufficient to meet operating and maintenance expenses of the agency, costs of renewals and replacements to a project, interest and principal pay-

ments, whether at maturity or upon sinking-fund redemption, on any outstanding bonds or other indebtedness of the city, and creation and maintenance of any reasonable reserves therefor and to provide for any margins or coverages over and above debt service on the bonds deemed desirable for the marketability or security of the bonds;

(4) Covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity, as to the terms and conditions upon which such declaration and its consequences may be waived, and as to the consequences of default and the remedies of bondholders;

(5) Covenant as to the mortgage or pledge of or the grant of any other security interest in any real or personal property and all or any part of the revenue from any property, contract, or other source within the city's economic development program to secure the payment of bonds, subject to such agreements with the holders of outstanding bonds as may then exist;

(6) Covenant as to the custody, collection, securing, investment, and payment of any revenue, assets, money, funds, or property with respect to which the city may have any rights or interest pursuant to the economic development program;

(7) Covenant as to the purposes to which the proceeds from the sale of any bonds may be applied and the pledge of such proceeds to secure the payment of the bonds;

(8) Covenant as to limitations on the issuance of any additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds;

(9) Covenant as to the rank or priority of any bonds with respect to any lien or security;

(10) Covenant as to the procedure by which the terms of any contract with or for the benefit of the bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(11) Covenant as to the custody, safekeeping, and insurance of any of the properties or investments of the city and the use and disposition of insurance proceeds;

(12) Covenant as to the vesting in a trustee or trustees, within or outside the state, of such properties, rights, powers, and duties in trust as the city may determine;

(13) Covenant as to the appointing and providing for the duties and obligations of a paying agent or paying agents or other fiduciaries within or outside the state;

(14) Make all other covenants and do any and all such acts and things as may be necessary, convenient, or desirable in order to secure its bonds or, in the absolute discretion of the city, tend to make the bonds more marketable, notwithstanding that such covenants, acts, or things may not be enumerated in this section; and

(15) Execute all instruments necessary or convenient in the exercise of the economic development program granted or in the performance of covenants or

duties, which instruments may contain such covenants and provisions as any purchaser of bonds may reasonably require.

Source: Laws 1993, LB 732, § 6.

18-2730 Refunding bonds; issuance authorized.

Any city may issue and sell refunding bonds for the purpose of paying or providing for the payment of any of its bonds issued under section 18-2724 at or prior to maturity or upon acceleration or redemption. Refunding bonds may be issued at any time prior to or at the maturity or redemption of the refunded bonds as the city's governing body deems appropriate. The refunding bonds may be issued in principal amount not exceeding an amount sufficient to pay or to provide for the payment of (1) the principal of the bonds being refunded, (2) any redemption premium thereon, (3) interest accrued or to accrue to the first or any subsequent redemption date or dates selected by the city's governing body in its discretion or to the date or dates of maturity, whichever is determined to be most advantageous or convenient for the city, (4) the expenses of issuing the refunding bonds, including bond discount, and redeeming the bonds being refunded, and (5) such reserves for debt service or other capital or current expenses from the proceeds of such refunding bonds as may be deemed necessary or convenient by the governing body of the issuing city. A determination by the governing body that any refinancing is advantageous or necessary, that any of the amounts provided in this section should be included in such refinancing, or that any of the bonds to be refinanced should be called for redemption on the first or any subsequent redemption date or permitted to remain outstanding until their respective dates of maturity shall be conclusive.

Source: Laws 1993, LB 732, § 7.

18-2731 Refunding bonds; use; holder of bonds; payment of interest.

Refunding bonds issued under section 18-2730 may be exchanged for and in payment and discharge of any of the outstanding obligations being refunded. The refunding bonds may be exchanged for a like, greater, or smaller principal amount of the bonds being refunded as the issuing city's governing body may determine in its discretion. The holder or holders of the bonds being refunded need not pay accrued interest on the refunding bonds if and to the extent that interest is due or accrued and unpaid on the bonds being refunded and to be surrendered.

Source: Laws 1993, LB 732, § 8.

18-2732 Refunding bonds; deposit of proceeds in trust; investments authorized; section, how construed.

To the extent not required for the immediate payment and retirement of the obligations being refunded or for the payment of expenses incurred in connection with such refunding and subject to any agreement with the holders of any outstanding bonds, principal proceeds from the sale of any refunding bonds under section 18-2730 shall be deposited in trust to provide for the payment and retirement of the bonds being refunded, payment of interest and any redemption premiums, and payment of any expenses incurred in connection with such refunding, but provision may be made for the pledging and disposition of any surplus, including, but not limited to, provision for the pledging of any such surplus to the payment of the principal of and interest on any issue or

series of refunding bonds. Money in any such trust fund may be invested in direct obligations of or obligations the principal of and interest on which are guaranteed by the United States Government, in obligations of any agency or instrumentality of the United States Government, or in certificates of deposit issued by a bank, capital stock financial institution, qualifying mutual financial institution, or trust company if such certificates are secured by a pledge of any of such obligations having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. Nothing in this section shall be construed as a limitation on the duration of any deposit in trust for the retirement of obligations being refunded but which have not matured and which are not presently redeemable or, if presently redeemable, have not been called for redemption. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1993, LB 732, § 9; Laws 2001, LB 362, § 28.

18-2733 Refunding bonds; general provisions applicable.

The issue of refunding bonds, the manner of sale, the maturities, interest rates, form, and other details thereof, the security therefor, the rights of the holders thereof, and the rights, duties, and obligations of the city in respect of the same shall be governed by the provisions of sections 18-2724 to 18-2736 relating to the issue of bonds other than refunding bonds insofar as the same may be applicable.

Source: Laws 1993, LB 732, § 10.

18-2734 Issuance of bonds; consent or other conditions not required.

Bonds may be issued under sections 18-2724 to 18-2736 without obtaining the consent of any department, division, commission, board, bureau, or instrumentality of this state and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, or things which are specifically required therefor by such sections, and the validity of and security for any bonds shall not be affected by the existence or nonexistence of any such consent or other proceedings, conditions, or things.

Source: Laws 1993, LB 732, § 11.

18-2735 Bonds; securities; investment authorized.

Bonds issued pursuant to sections 18-2724 to 18-2736 shall be securities in which all public officers and instrumentalities of the state and all political subdivisions, insurance companies, trust companies, banks, savings and loan associations, investment companies, executors, administrators, personal representatives, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds shall be securities which may properly and legally be deposited with and received by any officer or instrumentality of this state or any political subdivision for any purpose for which the deposit of bonds or obligations of this state or any political subdivision thereof is now or may hereafter be authorized by law.

Source: Laws 1993, LB 732, § 12.

18-2736 Bonds; tax exempt.

All bonds of a city issued pursuant to sections 18-2724 to 18-2736 are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempt from all taxes.

Source: Laws 1993, LB 732, § 13.

18-2737 Economic development program approved prior to June 1, 1993; bond issuance; authorized; procedure.

(1) Any city which has received voter approval to conduct an economic development program pursuant to the Local Option Municipal Economic Development Act prior to June 1, 1993, may, subject to subsection (2) of this section, issue bonds as provided by the act even though the proposed plan prepared pursuant to section 18-2710 did not contemplate or provide for the issuance of bonds and the question on the ballot approved by the voters did not set out that the city proposed to issue bonds to provide funds to carry out the economic development program.

(2) The governing body of any city proposing to issue bonds pursuant to the authority granted by subsection (1) of this section shall adopt a resolution expressing the intent of the city to issue bonds from time to time pursuant to the act to provide funds to carry out the economic development program. Such resolution shall set a date for a public hearing on the issue of exercising such authority, and notice of such hearing shall be published in a newspaper of general circulation in the city at least seven days prior to the date of such hearing. Following such hearing, the governing body of the city shall amend or incorporate into the ordinance adopted pursuant to section 18-2714 a provision authorizing the governing body to exercise, in the manner set forth in the act, the authority granted by the act to issue bonds to provide funds to carry out the economic development program.

(3) Any city desiring to exercise the authority granted by this section which complies with the provisions of subsection (2) of this section may exercise the authority to issue bonds as provided in the act.

Source: Laws 1993, LB 732, § 14.

18-2738 Act; supplemental powers; how construed.

The powers conferred by the Local Option Municipal Economic Development Act shall be in addition and supplemental to the powers conferred by any other law and shall be independent of and in addition to any other provisions of the law of Nebraska, including the Community Development Law. The act and all grants of power, authority, rights, or discretion to a city under the act shall be liberally construed, and all incidental powers necessary to carry the act into effect are hereby expressly granted to and conferred upon a city.

Source: Laws 1993, LB 732, § 15.

Cross References

Community Development Law, see section 18-2101.

ARTICLE 28
MUNICIPAL PROPRIETARY FUNCTIONS

Section

18-2801 Act, how cited.

Sections 18-2801 to 18-2808 shall be known and may be cited as the Municipal Proprietary Function Act.

Source: Laws 1993, LB 734, § 1.

18-2802 Purpose of act.

The purpose of the Municipal Proprietary Function Act is to require municipal governing bodies of cities of all classes and villages to follow prescribed procedures and make available to the public pertinent financial information with regard to functions of municipal government which generate revenue and expend funds based largely on customer demand.

Source: Laws 1993, LB 734, § 2.

18-2803 Terms, defined.

For purposes of the Municipal Proprietary Function Act:

(1) Fiscal year shall mean the twelve-month period established by each governing body for each proprietary function of municipal government for determining and carrying on its financial affairs for each proprietary function;

(2) Governing body shall mean the city council in the case of a city of any class and the board of trustees in the case of a village and shall include any city with a home rule charter;

(3) Municipal budget statement shall mean a budget statement adopted by a governing body for nonproprietary functions of the municipality under the Nebraska Budget Act;

(4) Proprietary budget statement shall mean a budget adopted by a governing body for each proprietary function pursuant to the Municipal Proprietary Function Act; and

(5) Proprietary function shall mean a water supply or distribution utility, a wastewater collection or treatment utility, an electric generation, transmission, or distribution utility, a gas supply, transmission, or distribution utility, an integrated solid waste management collection, disposal, or handling utility, or a hospital or a nursing home owned by a municipality.

Source: Laws 1993, LB 734, § 3.

Cross References

Nebraska Budget Act, see section 13-501.

18-2804 Fiscal year established.

Each governing body may establish a separate fiscal year for each proprietary function, except that any proprietary function which is subsidized by appropriations from the municipality's general fund shall have the same fiscal year as the municipality. For purposes of this section, subsidization shall mean that the costs of operation of a proprietary function are regularly financed by appropriations from the municipality's general fund in excess of the amount paid by the municipality to the proprietary function for actual service or services received.

Source: Laws 1993, LB 734, § 4.

18-2805 Proposed proprietary budget statement; contents; filing.

(1) At least thirty days prior to the start of the fiscal year of each proprietary function, a proposed proprietary budget statement shall be prepared in writing and filed with the municipal clerk containing the following information:

(a) For the immediately preceding fiscal year, the revenue from all sources, the unencumbered cash balance at the beginning and end of the year, the amount received by taxation, and the amount of actual expenditure;

(b) For the current fiscal year, actual and estimated revenue from all sources separately stated as to each such source, the actual unencumbered cash balance available at the beginning of the year, the amount received from taxation, and the amount of actual and estimated expenditure, whichever is applicable;

(c) For the immediately ensuing fiscal year, an estimate of revenue from all sources separately stated as to each such source, the actual or estimated unencumbered cash balance, whichever is applicable, to be available at the beginning of the year, the amounts proposed to be expended during the fiscal year, and the amount of cash reserve based on actual experience of prior years; and

(d) A uniform summary of the proposed budget statement which shall include a total of all funds maintained for the proprietary function.

(2) Such statement shall contain the estimated cash reserve for each fiscal year and shall note whether or not such reserve is encumbered. The cash reserve projections shall be based upon the actual experience of prior years.

(3) Each proprietary budget statement shall be filed on forms prescribed and furnished by the Auditor of Public Accounts following consultation with representatives of such governing bodies as operate proprietary functions subject to the provisions of the Municipal Proprietary Function Act.

Source: Laws 1993, LB 734, § 5; Laws 1999, LB 86, § 9; Laws 2006, LB 1066, § 1.

18-2806 Proposed proprietary budget statement; hearing; procedure; adopted statement; filing.

(1) After a proposed proprietary budget statement is filed with the municipal clerk, the governing body shall conduct a public hearing on such statement. Notice of the time and place of the hearing, a summary of the proposed proprietary budget statement, and notice that the full proposed proprietary budget statement is available for public review with the municipal clerk during

normal business hours shall be published one time at least five days prior to the hearing in a newspaper of general circulation within the governing body's jurisdiction or by mailing to each resident within the governing body's jurisdiction.

(2) After such hearing, the proposed proprietary budget statement shall be adopted or amended and adopted as amended, and a written record shall be kept of such hearing. If the adopted proprietary budget statement reflects a change from the proposed proprietary budget statement presented at the hearing, a copy of the adopted proprietary budget statement shall be filed with the municipal clerk within twenty days after its adoption and published in a newspaper of general circulation within the governing body's jurisdiction or by mailing to each resident within the governing body's jurisdiction.

Source: Laws 1993, LB 734, § 6.

18-2807 Proprietary function reconciliation statement; when adopted; filing; public hearing; when.

If the actual expenditures for a proprietary function exceed the estimated expenditures in the proprietary budget statement during its fiscal year, the governing body shall adopt a proprietary function reconciliation statement within ninety days after the end of such fiscal year which reflects any difference between the adopted proprietary budget statement for the previous fiscal year and the actual expenditures and revenue for such fiscal year. After adoption of a proprietary function reconciliation statement, it shall be filed with the municipal clerk and published in a newspaper of general circulation within the governing body's jurisdiction or by mailing to each resident within the governing body's jurisdiction. If the difference between the adopted proprietary budget for the previous fiscal year and the actual expenditures and revenue for such fiscal year is greater than ten percent, the proprietary function reconciliation statement shall only be adopted following a public hearing.

Source: Laws 1993, LB 734, § 7.

18-2808 Act; exemption; accounting of income.

If the budget of a proprietary function is included in the municipal budget statement created pursuant to the Nebraska Budget Act, the Municipal Proprietary Function Act need not be followed for that proprietary function. Any income from a proprietary function which is transferred to the general fund of the municipality shall be shown as a source of revenue in the municipal budget statement created pursuant to the Nebraska Budget Act.

Source: Laws 1993, LB 734, § 8.

Cross References

Nebraska Budget Act, see section 13-501.

CHAPTER 19
CITIES AND VILLAGES; LAWS APPLICABLE TO MORE THAN ONE AND LESS THAN ALL CLASSES

Article.

1. Municipal Development Funds. (Applicable to cities of the metropolitan or primary class.) 19-101 to 19-104.
2. Toll Bridges. (Applicable to cities of the metropolitan or first class.) 19-201.
3. Plumbing Inspection. Transferred.
4. Commission Form of Government. (Applicable to cities of 2,000 population or over.) 19-401 to 19-434.
5. Charter Convention. (Applicable to cities over 5,000 population.) 19-501 to 19-503.
6. City Manager Plan. (Applicable to cities of 1,000 population or more and less than 200,000.)
   (a) General Provisions. 19-601 to 19-604.
   (b) Adoption and Abandonment of Plan. 19-605 to 19-610.
   (c) City Council. 19-611 to 19-620.
   (d) Nominations and Elections. 19-621 to 19-627. Repealed.
   (e) Recall. 19-628 to 19-637. Repealed.
   (f) Initiative and Referendum. 19-638 to 19-644. Repealed.
   (g) City Manager. 19-645 to 19-648.
   (h) Civil Service Board. 19-649 to 19-661. Repealed.
   (i) Petition for Abandonment. 19-662.
7. Eminent Domain. 19-701 to 19-710.
8. Aviation Fields. Transferred.
9. City Planning, Zoning. (Applicable to cities of the first or second class and villages.). 19-901 to 19-933.
10. Housing Authorities. Repealed.
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13. Funds. (Applicable to cities of the first or second class and villages.) 19-1301 to 19-1313.
14. Light, Heat, and Ice. (Applicable to all except cities of the metropolitan class.) 19-1401 to 19-1405.
15. Incompletely Performed Contracts. (Applicable to all except cities of the metropolitan class.) 19-1501, 19-1502.
16. Combining Offices of City Clerk and City Treasurer. Transferred.
17. Law Enforcement in Defense Areas. Expiration of act.
18. Civil Service Act. 19-1801 to 19-1847.
19. Municipal Budget Act. Repealed.
20. Municipal Retirement System. Repealed.
21. Garbage Disposal. (Applicable to cities of the first or second class and villages.) 19-2101 to 19-2113.
22. Correction of Corporate Limits. (Applicable to cities of the first or second class and villages.) 19-2201 to 19-2204.
23. Parking Meters. (Applicable to cities of the first or second class and villages.) 19-2301 to 19-2304.
24. Municipal Improvements. (Applicable to cities of the first or second class and villages.) 19-2401 to 19-2431.
25. Industrial Areas. Transferred or Repealed.
26. Urban Redevelopment. Transferred.
27. Public Utility Service.
   (a) Contracts. (Applicable to cities of the first or second class.) 19-2701.

Article.
(b) Discontinuance of Service. (Applicable to all cities.) 19-2702 to 19-2715. Transferred or Repealed.
(c) Discontinuance of Service. (Applicable to all villages.) 19-2716, 19-2717. Transferred.
28. Wired Television and Radio Systems. Repealed.
29. Nebraska Municipal Auditing Law. (Applicable to cities of the first or second class and villages.) 19-2901 to 19-2909.
30. Municipal Elections. (Applicable to cities of the first or second class and villages.) 19-3001 to 19-3052.
31. Municipal Vacancies. (Applicable to cities of the first or second class and villages.) 19-3101.
32. Defective Public Places. Repealed.
33. Offstreet Parking. (Applicable to cities of the primary, first, or second class.)
(a) Offstreet Parking District Act. 19-3301 to 19-3326.
(b) Miscellaneous. 19-3327.
34. Downtown Improvement and Parking District Act of 1969. Repealed.
35. Pension Plans. (Applicable to cities of the first or second class and villages.) 19-3501.
36. Unattended Child in Motor Vehicle. Repealed.
37. Ordinances. (Applicable to cities of the first or second class and villages.) 19-3701.
38. Police Services. (Applicable to cities of the first or second class and villages.) 19-3801 to 19-3804.
39. Nebraska Public Transportation Act of 1975. Transferred.
40. Business Improvement Districts. (Applicable to all cities.) 19-4001 to 19-4038.
41. Disposal Sites. (Applicable to cities of the metropolitan, primary, or first class.) Repealed.
42. Recall Procedures. Repealed.
43. Public Streets and Sidewalks. (Applicable to all cities.) 19-4301.
44. Planned Unit Development. (Applicable to cities of the metropolitan, primary, or first class.) 19-4401.
45. Special Assessments. (Applicable to cities of the metropolitan, primary, or first class.) Transferred.
46. Municipal Natural Gas. (Applicable to all except cities of the metropolitan class.)
(a) Municipal Natural Gas Regulation Act. 19-4601 to 19-4623. Repealed.
(b) Municipal Natural Gas System Condemnation Act. 19-4624 to 19-4645.
47. Baseball. 19-4701.
48. Code Enforcement. (Applicable to cities of the metropolitan, primary, or first class.) Transferred.
49. Judicial Proceedings. (Applicable to cities of the first or second class and villages.) 19-4901.

ARTICLE 1

MUNICIPAL DEVELOPMENT FUNDS
(Applicable to cities of the metropolitan or primary class.)

Section
19-101. Legislative intent.
19-102. City of the Primary Class Development Fund; created; use; investment.
19-103. City of the Metropolitan Class Development Fund; created; use; investment.
19-104. Bonds authorized; requirements.

19-101 Legislative intent.

The Legislature recognizes that the more populous cities of the state serve medical, educational, recreational, transportation, and retail needs of the entire state and that infrastructure costs and needs are great. The governing bodies of such cities have a duty to identify projects which benefit from development funds made available by the Legislature. The creation of the City of the Primary

Class Development Fund under section 19-102 and the City of the Metropolitan Class Development Fund under section 19-103 shall be used to meet such needs.

Source: Laws 2001, LB 657, § 1.

19-102 City of the Primary Class Development Fund; created; use; investment.

There is hereby created the City of the Primary Class Development Fund. Amounts credited to the fund pursuant to section 77-2602 shall, upon appropriation by the Legislature, be first expended to support the design and development of the Antelope Valley project and financing costs related thereto for the Antelope Valley Study as outlined in the Environmental Impact Statement and Comprehensive Plan Amendment 94-60 to the 1994 Lincoln/Lancaster County Comprehensive Plan. 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.

No distribution from the fund shall be made unless the city of the primary class provides matching funds equal to the ratio of one dollar for each three dollars of the state distribution. Funds derived from any state source may not be utilized as matching funds for purposes of this section.

Source: Laws 2001, LB 657, § 2.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

19-103 City of the Metropolitan Class Development Fund; created; use; investment.

There is hereby created the City of the Metropolitan Class Development Fund. Amounts credited to the fund pursuant to section 77-2602 shall, upon appropriation by the Legislature, be first expended to support the design and development of the redevelopment projects within the riverfront redevelopment plan designated for the area along the Missouri River generally north of Interstate 480 to Interstate 680 by the city of Omaha, except that each fiscal year there shall be no distribution from the fund until the finance director of the city certifies that other funds have been encumbered for that calendar year by the city to pay the cost of the combined sewer separation program project east of Seventy-second Street in the city of Omaha. Such certification shall be required only until such sewer separation project is completed or until no cigarette tax money is available to the fund. The amount certified shall be at least seven million dollars each calendar year until 2007 and at least four million dollars each calendar year thereafter. The sewer separation project has such a significant impact on the health and welfare of such a large percentage of the population and on public health in general that the project is a matter of statewide concern. 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.

No distribution from the fund shall be made unless the city of the metropolitan class provides matching funds equal to the ratio of one dollar for each three

dollars of the state distribution. Funds derived from any state source may not be utilized as matching funds for purposes of this section.

Source: Laws 2001, LB 657, § 3.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

19-104 Bonds authorized; requirements.

(1) Cities of the primary class and cities of the metropolitan class may by ordinance issue their bonds and refunding bonds to finance and refinance the acquisition, construction, improving, and equipping of the projects authorized by sections 19-101 to 19-103 and provide for the payment of the same as specified in this section. Bonds, except refunding bonds, authorized by this section may only be issued once, and such issuance must occur within two years after July 1, 2001. An issuer shall be permitted to pledge the amounts on deposit or to be deposited in the City of the Primary Class Development Fund or the City of the Metropolitan Class Development Fund, as applicable, as and when appropriated by the Legislature, to the registered owners of any bonds issued to finance the acquisition, construction, improving, or equipping of projects as approved in sections 19-101 to 19-103 as long as the lien of such pledge does not attach until funds are actually deposited into the issuer's respective fund, and in no event shall such a pledge be construed as an obligation of the Legislature to appropriate such funds. Any such pledge shall be valid and binding from the time when the pledge is made. The money so pledged and thereafter received by the issuer or deposited into its respective fund shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the issuer, irrespective of whether the parties have notice thereof. Neither the ordinance nor any other instrument by which a pledge is created need be recorded.

(2) Such bonds may be sold by the issuer in such manner and for such price as the mayor and city council determine, at a discount, at par, or at a premium, at private negotiated sale or at public sale. The bonds shall have a stated maturity of fifteen years or less and shall bear interest at such rate or rates and otherwise be issued by ordinance adopted by the mayor and city council with such other terms and provisions as are established, permitted, or authorized by applicable state laws, notwithstanding any provisions of a home rule charter. In addition to the pledge of the amounts on deposit or to be deposited in the City of the Primary Class Development Fund or the City of the Metropolitan Class Development Fund, as the case may be and as appropriate, permitted by subsection (1) of this section, such bonds may also be secured as to payment in whole or in part by a pledge, as shall be determined by the issuer, (a) from the income, proceeds, and revenue, if any, of the facilities financed with proceeds of such bonds, and (b) from its revenue and income, including its sales, use, or occupation tax revenue, fees, or receipts, as may be determined by the issuer. The issuer may further secure such bonds by a mortgage or deed of trust encumbering all or any portion of the facilities financed with the proceeds of such bonds and by a bond insurance policy or other credit support facility. No general obligation bonds, except refunding bonds, shall be issued until authorized by a majority of the issuer's electors voting on the question as to the

issuance of the bonds at a statewide regular primary election or at a special election duly called for such purpose.

(3) The face of all such bonds shall plainly state that the bonds and the interest thereon shall not constitute nor give rise to an indebtedness, obligation, or pecuniary liability of the state nor a charge against the general credit, revenue, or taxing power of the state. Bonds issued in accordance with the provisions of this section are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempt from all state income taxes.

(4) For purposes of this section, general obligation bond means any bond or refunding bond which is payable from the proceeds of an ad valorem tax.

Source: Laws 2001, LB 657, § 4.

ARTICLE 2

TOLL BRIDGES
(Applicable to cities of the metropolitan or first class.)

Section
19-201. Toll bridges; licensing; regulation.

19-201 Toll bridges; licensing; regulation.

The mayor and council in any city of the metropolitan or first class shall have power to license and regulate the keeping of toll bridges within or terminating within the city, for the passage of persons and property over any river passing wholly or in part within or running by and adjoining the corporate limits of any such city, to fix and determine the rates of toll over any such bridge, or over the part thereof within the city, and to authorize the owner or owners of any such bridge to charge and collect the rates of toll so fixed and determined from all persons passing over or using the same.

Source: Laws 1871, § 1, p. 26; R.S.1913, § 5273; C.S.1922, § 4496; C.S.1929, § 19-201; R.S.1943, § 19-201; Laws 1969, c. 111, § 1, p. 519.

ARTICLE 3

PLUMBING INSPECTION

Section
19-301. Transferred to section 18-1901.
19-302. Transferred to section 18-1902.
19-303. Transferred to section 18-1903.
19-304. Transferred to section 18-1904.
19-305. Transferred to section 18-1905.
19-306. Transferred to section 18-1906.
19-307. Transferred to section 18-1907.
19-308. Transferred to section 18-1908.
19-309. Transferred to section 18-1909.
19-310. Transferred to section 18-1910.
19-311. Transferred to section 18-1911.
19-312. Transferred to section 18-1912.
19-313. Transferred to section 18-1913.
19-314. Transferred to section 18-1914.

19-301 Transferred to section 18-1901.

19-302 Transferred to section 18-1902.

19-303 Transferred to section 18-1903.

19-304 Transferred to section 18-1904.

19-305 Transferred to section 18-1905.

19-306 Transferred to section 18-1906.

19-307 Transferred to section 18-1907.

19-308 Transferred to section 18-1908.

19-309 Transferred to section 18-1909.

19-310 Transferred to section 18-1910.

19-311 Transferred to section 18-1911.

19-312 Transferred to section 18-1912.

19-313 Transferred to section 18-1913.

19-314 Transferred to section 18-1914.

ARTICLE 4

COMMISSION FORM OF GOVERNMENT
(Applicable to cities of 2,000 population or over.)

Section

Section
19-433. Commission plan; discontinuance; petition; election; procedure.
19-434. Repealed. Laws 1986, LB 734, § 2.

19-401 Commission plan; population requirement.

Any city in this state having not less than two thousand inhabitants according to the last official state or national census, or according to the last census taken and promulgated in such city by the authority of the mayor and city council of any such city, may adopt the provisions of sections 19-401 to 19-433 and be governed thereunder by proceeding as hereinafter provided.

Source: Laws 1911, c. 24, § 1, p. 150; R.S.1913, § 5288; Laws 1919, c. 35, § 1, p. 113; C.S.1922, § 4511; Laws 1923, c. 141, § 1, p. 344; C.S.1929, § 19-401.

Laws 1911, Chapter 24 (sections 19-401 to 19-433), is an act complete in itself, and the constitutional provision respecting the manner of amendment and repeal of former statutes has no application. State ex rel. Baughn v. Ure, 91 Neb. 31, 135 N.W. 224 (1912).

19-402 Commission plan; petition for adoption; election; ballot form.

If a petition is filed with the city clerk of any city meeting the requirements of section 19-401, signed by registered voters equal in number to twenty-five percent of the votes cast for all candidates for mayor at the last preceding general city election, the mayor of the city shall, by appropriate proclamation and notice within twenty days after such filing, call and proclaim a special election to be held upon a date fixed in such proclamation and notice, which date shall not be less than fifteen nor more than sixty days after the date and issuance of such proclamation. After the filing of any petition provided for in this section, no signer thereon shall be permitted to withdraw his or her name therefrom. At such special election the proposition of adopting the provisions of sections 19-401 to 19-433 shall be submitted to the registered voters of the city, and such proposition shall be stated as follows: Shall the city of (name of city) adopt the provisions of (naming the charter of the published law containing such sections) called the commission plan of city government? The special election shall be held and conducted, the vote canvassed, and the result declared in the same manner as provided for the holding and conducting of the general city election in any such city. All officers charged with any duty respecting the calling, holding, and conducting of such general city election shall perform such duties for and at such special election.

Source: Laws 1911, c. 24, § 2, p. 150; R.S.1913, § 5289; Laws 1919, c. 35, § 1, p. 113; C.S.1922, § 4512; C.S.1929, § 19-402; R.S.1943, § 19-402; Laws 1994, LB 76, § 507.

19-403 Commission plan; proposal for adoption; frequency.

If the proposition is not adopted at any such special election by a majority vote, the question of adopting it shall not be again submitted in any such city within two years thereafter.

Source: Laws 1911, c. 24, § 3, p. 151; R.S.1913, § 5290; C.S.1922, § 4513; C.S.1929, § 19-403.

19-404 Adoption of commission plan; effect.

If the proposition is adopted for the commission plan of city government at least sixty days prior to the next general city election in the city, then at the next

general city election provided by law in such city, council members shall be elected as provided in section 32-539. If the proposition is not adopted at least sixty days prior to the date of holding the next general city election in such city, then such city shall continue to be governed under its existing laws until council members are elected as provided in section 32-539 at the next general city election thereafter occurring in any such city.

Source: Laws 1911, c. 24, § 4, p. 151; Laws 1913, c. 21, § 1, p. 85; R.S.1913, § 5291; Laws 1919, c. 35, § 1, p. 114; C.S.1922, § 4514; Laws 1923, c. 141, § 2, p. 345; C.S.1929, § 19-404; R.S.1943, § 19-404; Laws 1955, c. 55, § 2, p. 176; Laws 1969, c. 257, § 14, p. 937; Laws 1979, LB 281, § 1; Laws 1979, LB 80, § 37; Laws 1994, LB 76, § 508.

It was not necessary or proper to elect a Tax Commissioner in Lincoln inasmuch as Lincoln operated under the home rule charter plan of the commission form of government. Eppley Hotels Co. v. City of Lincoln, 133 Neb. 550, 276 N.W. 196 (1937).

19-405 Council members; nomination; candidate filing form; primary election; waiver.

(1) Any person desiring to become a candidate for the office of council member provided for in section 19-404 shall file a candidate filing form as provided in sections 32-606 and 32-607 and pay the filing fee as provided in section 32-608.

(2) Candidates shall be nominated at large either at the statewide primary election or by filing a candidate filing form if there are not more than two candidates who have filed for each position or if the council waives the requirement for a primary election.

(3) The council may waive the requirement for a primary election by adopting an ordinance prior to January 5 of the year in which the primary election would have been held. If the council waives the requirement for a primary election, all candidates filing candidate filing forms by August 1 prior to the date of the general election as provided in subsection (2) of section 32-606 shall be declared nominated. If the council does not waive the requirement for a primary election and if there are not more than two candidates filed for each position to be filled, all candidates filing candidate filing forms by the deadline prescribed in subsection (1) of section 32-606 shall be declared nominated as provided in subsection (1) of section 32-811 and their names shall not appear on the primary election ballot.

Source: Laws 1911, c. 24, § 5, p. 152; Laws 1913, c. 21, § 2, p. 86; R.S.1913, § 5292; Laws 1919, c. 35, § 1, p. 115; C.S.1922, § 4515; Laws 1923, c. 141, § 3, p. 345; C.S.1929, § 19-405; R.S.1943, § 19-405; Laws 1969, c. 112, § 1, p. 519; Laws 1969, c. 257, § 15, p. 938; Laws 1979, LB 80, § 38; Laws 1989, LB 327, § 1; Laws 1994, LB 76, § 509; Laws 1999, LB 250, § 1.

19-406 Mayor and council members; election.

Elections for officers listed in section 19-415 shall be conducted as provided in the Election Act. The positions for which candidates are to be nominated or elected shall appear on the ballot in the order listed in section 19-415.

Source: Laws 1911, c. 24, § 5, p. 153; Laws 1913, c. 21, § 2, p. 87; R.S.1913, § 5292; Laws 1919, c. 35, § 1, p. 116; C.S.1922,

§ 4515; Laws 1923, c. 141, § 3, p. 346; C.S.1929, § 19-405; R.S.1943, § 19-406; Laws 1969, c. 112, § 2, p. 520; Laws 1979, LB 80, § 39; Laws 1989, LB 327, § 2; Laws 1994, LB 76, § 510.

Cross References

Election Act, see section 32-101.

19-407 Excise members; nomination.

Candidates for office of excise member provided for in section 32-539 shall be nominated at large in the same general manner and method as provided in section 19-405 for the nomination of candidates for the office of council members.

Source: Laws 1913, c. 21, § 2, p. 88; R.S.1913, § 5292; Laws 1919, c. 35, § 1, p. 116; C.S.1922, § 4515; Laws 1923, c. 141, § 3, p. 347; C.S.1929, § 19-405; R.S.1943, § 19-407; Laws 1979, LB 80, § 40; Laws 1994, LB 76, § 511.

19-408 Repealed. Laws 1994, LB 76, § 615.

19-409 Council members; excise members; candidates; terms.

(1) The two candidates receiving the highest number of votes at the primary election shall be placed upon the official ballot for such position at the statewide general election. If no candidates appeared on the primary election ballot or if the council waived the primary election under section 19-405, all persons filing pursuant to section 19-405 shall be the only candidates whose names shall be placed upon the official ballot for such position at the statewide general election.

(2) If excise members are to be elected, the six candidates receiving the highest number of votes for excise members at the primary election or all candidates, if there are less than six on the primary election ballot or if no primary election is held, shall be the only candidates whose names shall be placed upon the official ballot for excise members at the statewide general election in any such city.

(3) Terms for council members shall begin on the date of the first regular meeting of the council in December following the statewide general election. The terms of council members holding office on August 28, 1999, shall be extended to the first regular meeting of the council in December following the statewide general election. The changes made to this section by Laws 1999, LB 250, shall not change the staggering of the terms of council members in cities that have adopted the commission plan of government prior to January 1, 1999.

Source: Laws 1911, c. 24, § 7, p. 155; Laws 1913, c. 21, § 3, p. 88; R.S.1913, § 5294; C.S.1922, § 4517; Laws 1923, c. 141, § 5, p. 348; C.S.1929, § 19-407; R.S.1943, § 19-409; Laws 1969, c. 112, § 4, p. 522; Laws 1979, LB 80, § 41; Laws 1989, LB 327, § 3; Laws 1994, LB 76, § 512; Laws 1999, LB 250, § 2.

The provision that the only candidates whose names shall be placed upon the official ballot at the city election means that these are the only candidates whose names shall be printed on the official ballot, and there is no prohibition against any voter inserting the names of such other persons as he may desire to vote for. State ex rel. Zeilinger v. Thompson, 134 Neb. 739, 279 N.W. 462 (1938).

19-410 Repealed. Laws 1994, LB 76, § 615.

19-411 Council members; excise members; bonds; vacancies, how filled.

The council members and excise members shall qualify and give bond in the manner and amount provided by the existing laws governing the city in which they are elected. If any vacancy occurs in the office of council member, the vacancy shall be filled as provided in section 32-568. If any vacancy occurs in the office of excise members, the remaining members of the excise board shall appoint a person to fill such vacancy for the remainder of the term. The terms of office of all other elective or appointive officers in force within or for any such city shall cease as soon as the council selects or appoints their successors and such successors qualify and give bond as by law provided or as soon as such council by resolution declares the terms of any such elective or appointive officers at an end or abolishes or discontinues any of such offices.

Source: Laws 1911, c. 24, § 9, p. 156; Laws 1913, c. 21, § 5, p. 89; R.S.1913, § 5296; C.S.1922, § 4519; C.S.1929, § 19-409; R.S. 1943, § 19-411; Laws 1969, c. 257, § 17, p. 941; Laws 1979, LB 80, § 43; Laws 1990, LB 853, § 3; Laws 1994, LB 76, § 513.

19-412 Officers; employees; compensation.

(1) The officers and employees of the city shall receive such compensation as the mayor and council shall fix by ordinance.

(2) The emoluments of any elective officer shall not be increased or diminished during the term for which he or she was elected, except that when there are officers elected to a council, board, or commission having more than one member and the terms of one or more members commence and end at different times, the compensation of all members of such council, board, or commission may be increased or diminished at the beginning of the full term of any member thereof. No person who has resigned or vacated any office shall be eligible to the same during the time for which he or she was elected when, during the same time, the emoluments have been increased.

(3) The salary or compensation of all other officers or employees of the city shall be determined when they are appointed or elected by the council, board, or commission and shall be payable at such times or for such periods as the council, board, or commission shall determine.

Source: Laws 1911, c. 24, § 10, p. 157; Laws 1913, c. 21, § 6, p. 90; R.S.1913, § 5297; Laws 1915, c. 97, § 1, p. 239; C.S.1922, § 4520; Laws 1923, c. 141, § 6, p. 349; C.S.1929, § 19-410; Laws 1943, c. 37, § 1, p. 179; R.S.1943, § 19-412; Laws 1951, c. 21, § 1, p. 105; Laws 1979, LB 80, § 44; Laws 1992, LB 950, § 1.

19-413 Council; powers.

The council herein provided for, upon taking office, shall have, possess, and exercise, by itself or through such methods as it may provide, all executive or legislative or judicial powers and duties theretofore held, possessed or exercised under the then existing laws governing any such city, by the mayor or mayor and city council or water commissioners or water board or water and light commissioner or board of fire and police commissioners or park commissioners or park board or excise board, or members thereof, or fire warden; and the powers, duties and office of such fire warden and of all such boards and the members thereof shall then and thereupon cease and terminate; and the powers and duties and officers of all other boards created by statute for the government of any such city shall also thereupon cease and terminate; *Provided, however,*

nothing herein contained shall be so construed as to interfere with the powers, duties, authority, and privileges that have been, are, or may be hereafter conferred and imposed upon the water board in metropolitan cities as prescribed by law or shall affect the power of city school or school district officers, nor of any office or officer named in the state Constitution exercising office, powers or functions within any such city. Such council, upon taking office, shall have and may exercise all executive or legislative or judicial powers possessed or exercised by any other officer or board theretofore provided by law for or within any such city, except officers named in the state Constitution; *Provided, however,* the excise board herein provided for, upon taking office, shall possess and exercise by itself all of the duties and powers theretofore possessed or exercised by the excise board under the existing laws governing any such city except the appointment, removal and control of the police force, which power shall be vested in the council.

Source: Laws 1911, c. 24, § 11, p. 158; Laws 1913, c. 21, § 7, p. 91; R.S.1913, § 5298; C.S.1922, § 4521; Laws 1923, c. 141, § 7, p. 350; C.S.1929, § 19-411.

19-414 Council; departments; assignment of duties.

The executive and administrative powers, authorities, and duties in such cities shall be distributed into and among departments as follows:

In metropolitan cities, (1) department of public affairs, (2) department of accounts and finances, (3) department of police, sanitation, and public safety, (4) department of fire protection and water supply, (5) department of street cleaning and maintenance, (6) department of public improvements, and (7) department of parks and public property;

In primary cities, (1) department of public affairs, (2) department of accounts and finances, (3) department of public safety, (4) department of streets and public improvements, and (5) department of parks and public property; and

In cities containing two thousand or more and not more than forty thousand population, (1) department of public affairs and public safety, (2) department of accounts and finances, (3) department of streets, public improvements, and public property, (4) department of public works, and (5) department of parks and recreation.

The council shall provide, as nearly as possible, the powers and duties to be exercised and performed by, and assign them to, the appropriate departments. It may prescribe the powers and duties of all officers and employees of the city and may assign particular officers, or employees, to more than one of the departments, may require any officer or employee to perform duties in two or more of the departments, and may make such other rules and regulations as may be necessary or proper for the efficient and economical management of the business affairs of the city.

Source: Laws 1911, c. 24, § 11, p. 159; Laws 1913, c. 21, § 7, p. 92; R.S.1913, § 5298; C.S.1922, § 4521; Laws 1923, c. 141, § 7, p. 351; C.S.1929, § 19-411; R.S.1943, § 19-414; Laws 1955, c. 55, § 3, p. 179; Laws 1979, LB 281, § 3.

The general plan of the commission form of government has been followed in Lincoln under the home rule charter. Eppley Hotels Co. v. City of Lincoln, 133 Neb. 550, 276 N.W. 196 (1937).

The fact that an officer had been in the habit of employing men in the past does not override the provision of the statute unless it had previously been agreed to by the city commissioner. Scott v. City of Lincoln, 104 Neb. 546, 178 N.W. 203 (1920).

The power to fix salaries of police officers and members of the fire department in cities of the metropolitan class was not included in this section. Adams v. City of Omaha, 101 Neb. 690, 164 N.W. 714 (1917).

19-415 Mayor; council members; powers and duties; heads of departments.

In cities of the metropolitan class, the council shall consist of the mayor who shall be superintendent of the department of public affairs, one council member to be superintendent of the department of accounts and finances, one council member to be superintendent of the department of police, sanitation, and public safety, one council member to be superintendent of the department of fire protection and water supply, one council member to be superintendent of the department of street cleaning and maintenance, one council member to be superintendent of the department of public improvements, and one council member to be superintendent of parks and public property.

In cities containing at least forty thousand and less than three hundred thousand inhabitants, the council shall consist of the mayor who shall be superintendent of the department of public affairs, one council member to be superintendent of the department of accounts and finances, one council member to be superintendent of the department of public safety, one council member to be superintendent of the department of streets and public improvements, and one council member to be superintendent of the department of parks and public property.

In cities containing at least two thousand and less than forty thousand inhabitants, the council shall consist of the mayor who shall be commissioner of the department of public affairs and public safety, one council member to be commissioner of the department of streets, public improvements and public property, one council member to be commissioner of the department of public accounts and finances, one council member to be commissioner of the department of public works, and one council member to be commissioner of the department of parks and recreation.

In all of such cities the commissioner of the department of accounts and finances shall be vice president of the city council and shall, in the absence or inability of the mayor to serve, perform the duties of the mayor of the city. In case of vacancy in the office of mayor by death or otherwise, the vacancy shall be filled as provided in section 32-568.

Source: Laws 1911, c. 24, § 12, p. 160; R.S.1913, § 5299; C.S.1922, § 4522; Laws 1923, c. 141, § 8, p. 352; C.S.1929, § 19-412; R.S.1943, § 19-415; Laws 1963, c. 89, § 1, p. 299; Laws 1969, c. 112, § 6, p. 523; Laws 1979, LB 80, § 45; Laws 1979, LB 281, § 4; Laws 1994, LB 76, § 514.

19-416 Officers; employees; appointment; compensation; removal.

The council shall at its first meeting, or as soon as possible thereafter, elect as many of the city officers provided for by the laws or ordinances governing any such city as may, in the judgment of the council, be essential and necessary to the economical but efficient and proper conduct of the government of the city and shall at the same time fix the salaries of the officers so elected either by providing that such salaries shall remain the same as fixed by the laws or ordinances for such officers or may then raise or lower the existing salaries of any such officers; and the council may modify the powers or duties of any such officers, as provided by laws or ordinances, or may completely define and fix such powers or duties, anew. Any such officers or any assistant or employee

elected or appointed by the council may be removed by the council at any time; *Provided, however,* in cities of the metropolitan class no member or officer of the fire department or department of fire protection and water supply shall be discharged for political reasons, nor shall a person be employed or taken into either of such departments for political reasons. Before any such officer or employee can be discharged charges must be filed against him before the council and a hearing had thereon, and an opportunity given such officer or employee to defend against such charges, but this provision shall not be construed to prevent peremptory suspension of such member by the council in case of misconduct or neglect of duty or disobedience of orders. Whenever any such suspension is made, charges shall be at once filed by the council with the officer having charge of the records of the council and a trial had thereon at the second meeting of the council after such charges are filed. For the purpose of hearing such charges the council shall have power to enforce attendance of witnesses, the production of books and papers, and to administer oaths to witnesses in the same manner and with like effect and under the same penalty, as in the case of magistrates exercising civil and criminal jurisdiction under the statutes of the State of Nebraska.

Source: Laws 1911, c. 24, § 13, p. 161; R.S.1913, § 5300; Laws 1919, Spec. Sess., c. 2, § 6, p. 49; C.S.1922, § 4523; C.S.1929, § 19-413.

The city council of Lincoln, under the provisions of its home rule charter, had the right to discharge one of its firemen without a hearing before the council. State ex rel. Fischer v. City of Lincoln, 137 Neb. 97, 288 N.W. 499 (1939).

A police officer holds indefinitely during good behavior and cannot be discharged for cause without a hearing and opportunity to defend. Rooney v. City of Omaha, 105 Neb. 447, 181 N.W. 143 (1920).

Statutes and judicial opinions refer to policemen as officers, and under the charter of the city of Omaha, can only be removed for cause after notice and hearing. Rooney v. City of Omaha, 104 Neb. 260, 177 N.W. 166 (1920).

Member of fire department cannot be discharged without stating cause and without hearing and opportunity to defend. State ex rel. Marrow v. City of Lincoln, 101 Neb. 57, 162 N.W. 138 (1917).

19-417 Offices and boards; creation; discontinuance.

The council shall have power to discontinue any employment or abolish any office at any time, when, in the judgment of the council, such employment or office is no longer necessary. The council shall have power, at any time and at any meeting, to create any office or board it deems necessary, including the office of city manager, and fix salaries; and it may create a board of three or more members composed of other officers of the city, and confer upon such board any power not required to be exercised by the council itself. It may require such officers to serve upon any such board and perform the services required of it with or without any additional pay for such additional service.

Source: Laws 1911, c. 24, § 14, p. 162; R.S.1913, § 5301; Laws 1919, c. 35, § 1, p. 116; C.S.1922, § 4524; C.S.1929, § 19-414.

For reasons of economy or lack of public necessity for services of a policeman, the city authorities may, when they see fit, terminate his employment, and he has no right to a statutory hearing upon the question of whether the public welfare requires a continuance of a full police force, or whether or not the revenues available are adequate for the payment of his salary. Rooney v. City of Omaha, 105 Neb. 447, 181 N.W. 143 (1920).

19-418 Council; meetings; quorum.

The regular meetings of the council in metropolitan cities shall be held at least once in each week and upon such day and hour as the council may designate. In all other cities having a population of two thousand or more, the regular meetings of the council shall be held at such intervals and upon such day and hour as the council may by ordinance or resolution designate; and

special meetings of the council in any of such cities may be called, from time to time, by the mayor or two council members, giving notice in such manner as may be fixed or defined by law or ordinance in any of such cities or as shall be fixed by ordinance or resolution by such council. A majority of such council shall constitute a quorum for the transaction of any business, but it shall require a majority vote of the whole council in any such city to pass any measure or transact any business.

Source: Laws 1911, c. 24, § 15, p. 163; R.S.1913, § 5302; C.S.1922, § 4525; C.S.1929, § 19-415; R.S.1943, § 19-418; Laws 1969, c. 257, § 18, p. 941; Laws 1979, LB 80, § 46.

19-419 Mayor; council members; office; duties.

The mayor and council members shall maintain offices at the city hall; and the mayor shall, in a general way, constantly investigate all public affairs concerning the interest of the city and investigate and ascertain, in a general way, the efficiency and manner in which all departments of the city government are being conducted; and the mayor shall recommend to the city council all such matters as in his or her judgment should receive the investigation, consideration, or action of that body.

Source: Laws 1911, c. 24, § 16, p. 163; R.S.1913, § 5303; C.S.1922, § 4526; C.S.1929, § 19-416; R.S.1943, § 19-419; Laws 1979, LB 80, § 47.

19-420 Repealed. Laws 1992, LB 950, § 2.

19-421 Petitions; requirements; verification; costs.

All petitions provided for in sections 19-401 to 19-433 shall be subject to and meet the requirements of sections 32-628 to 32-630. Upon the filing of a petition or supplementary petition, a city, upon passage of a resolution by the city council, and the county clerk or election commissioner of the county in which such city is located may by mutual agreement provide that the county clerk or election commissioner shall ascertain whether the petition or supplementary petition is signed by the requisite number of legal voters. The city shall reimburse the county for any costs incurred by the county clerk or election commissioner.

Source: Laws 1911, c. 24, § 18, p. 164; R.S.1913, § 5305; C.S.1922, § 4528; C.S.1929, § 19-418; R.S.1943, § 19-421; Laws 1983, LB 281, § 1; Laws 1994, LB 76, § 515.

Verification inadvertently omitted may be attached after petitions are filed. State ex rel. Miller v. Berg, 97 Neb. 63, 149 N.W. 61 (1914).

A petition filed under Nebraska referendum act did not suspend an ordinance providing for an election and vote on question whether Nebraska City should proceed to condemn power company's property. Central Power Co. v. Nebraska City, 112 F.2d 471 (8th Cir. 1940).

19-422 Cities adopting the commission plan; laws applicable.

All general state laws governing cities described in section 19-401 shall, according to the class within which it is embraced, apply to and govern any city adopting sections 19-401 to 19-433 and electing officers thereunder so far, and only so far, as such laws are applicable and not inconsistent with the provisions, intents and purposes of said sections.

Source: Laws 1911, c. 24, § 19, p. 164; R.S.1913, § 5306; C.S.1922, § 4529; C.S.1929, § 19-419.

The interests of the state in the police and fire protection would bring it within the jurisdiction of the state to regulate those matters. Adams v. City of Omaha, 101 Neb. 690, 164 N.W. 714 (1917).

19-423 Appropriations and expenses; alteration; power of first council.

If at the beginning of the term of office of the first council elected under sections 19-401 to 19-409 the appropriations or distribution of the expenditures of the city government for the current fiscal year have been made, the council shall have power, by ordinance, to revise, repeal, or change such distribution or to make additional appropriation, within the limit of the total taxes levied for such year.

Source: Laws 1911, c. 24, § 20, p. 164; R.S.1913, § 5307; C.S.1922, § 4530; C.S.1929, § 19-420; R.S.1943, § 19-423; Laws 1994, LB 76, § 516.

19-424 Repealed. Laws 1984, LB 975, § 14.

19-425 Repealed. Laws 1994, LB 76, § 615.

19-426 Repealed. Laws 1984, LB 975, § 14.

19-427 Repealed. Laws 1982, LB 807, § 46.

19-428 Repealed. Laws 1982, LB 807, § 46.

19-429 Repealed. Laws 1982, LB 807, § 46.

19-430 Repealed. Laws 1982, LB 807, § 46.

19-431 Repealed. Laws 1982, LB 807, § 46.

19-432 Commission plan; discontinuance; petition; election.

Any city which shall have operated for more than four years under the provisions of sections 19-401 to 19-433 may abandon organization thereunder, and accept the provisions of the general law of the state then applicable to cities of its population, by proceeding as follows: Upon a petition, signed by such number of the qualified electors of any such city as equals at least twenty-five percent of the highest vote cast for any of the council members elected at the last preceding general or regular election in any such city, being filed with and found sufficient by the city clerk or clerk of such council, a special election shall be called in any such city, at which special election the following proposition only shall be submitted: Shall the city of (name of city) abandon its organization under Chapter 19, article 4, and become a city under the general laws of the state governing cities of like population? If a majority of the votes cast at any such special election are in favor of such proposition, the officers elected at the next succeeding general city election in any such city shall be those then prescribed by the general laws of the state for cities of like population, and upon the qualification of such officers, according to the terms of such general state law, such city shall become a city governed by and under such general state law; *Provided,* if such special election is not held and the result thereof declared at least sixty days before the election date in any such city, then such city shall continue to be governed under the provisions of said sections until the second general city election occurring after the date of such special election, and at such general city election the officers provided by such general state law for the government of any such city shall be elected, and,

upon their qualification, the terms of office of the council members elected under the provisions of this article shall cease and terminate.

Source: Laws 1911, c. 24, § 24, p. 169; Laws 1913, c. 21, § 8, p. 93; R.S.1913, § 5311; C.S.1922, § 4534; C.S.1929, § 19-424; R.S. 1943, § 19-432; Laws 1969, c. 257, § 19, p. 942; Laws 1979, LB 80, § 52.

19-433 Commission plan; discontinuance; petition; election; procedure.

(1) Within ten days after the date of filing the petition asking for a special election on the issue of discontinuing the commission plan of government, the city clerk shall examine it and, with the assistance of the election commissioner or county clerk, ascertain whether the petition is signed by the requisite number of registered voters. If necessary, the city council shall allow the city clerk extra help for the purpose of examining the petition. No new signatures may be added after the initial filing of the petition. If the petition contains the requisite number of signatures, the city clerk shall promptly submit the petition to the council.

(2) Upon receipt of the petition, the council shall promptly order and fix a date for holding the special election, which date shall not be less than thirty nor more than sixty days from the date of the clerk's certificate to the council showing the petition sufficient. The special election shall be conducted in the same manner as provided for the election of council members under sections 19-401 to 19-433.

Source: Laws 1911, c. 24, § 24, p. 170; Laws 1913, c. 21, § 8, p. 93; R.S.1913, § 5311; C.S.1922, § 4534; C.S.1929, § 19-424; R.S. 1943, § 19-433; Laws 1979, LB 80, § 53; Laws 1984, LB 975, § 11; Laws 1994, LB 76, § 517.

19-434 Repealed. Laws 1986, LB 734, § 2.

ARTICLE 5

CHARTER CONVENTION
(Applicable to cities over 5,000 population.)

Section
19-501. Charter convention; charter; amendments; election.
19-502. Charter convention; work, when deemed complete; charter, when published.
19-503. Charter amendments; petition; adoption.

19-501 Charter convention; charter; amendments; election.

Whenever, in any city having a population of more than five thousand inhabitants, a charter convention shall have prepared and proposed any charter for the government of said city or any amendments to the charter previously in force, it shall be the duty of the city clerk to also publish and submit, at the same time and in the same manner as in the case of the submission of said proposed charter, any additional or alternative articles or sections, to the qualified voters of said city for their approval, which shall be proposed by the petition of at least ten percent of the qualified electors of said city voting for the gubernatorial candidates at the next preceding general election; *Provided,* said

petition must be filed within thirty days after the work of said charter convention shall have been completed.

Source: Laws 1913, c. 192, § 1, p. 569; R.S.1913, § 5312; C.S.1922, § 4535; C.S.1929, § 19-501.

19-502 Charter convention; work, when deemed complete; charter, when published.

The city clerk shall not begin the publication of any proposed charter or amendments, as required by the constitution, in less than thirty days from the time of the completion of the work of said charter convention; and the work of said charter convention shall be deemed completed whenever its certified copy of charter or amendments shall be delivered to the city clerk, together with twenty-five correct copies thereof. Said copies shall when filed be open to the inspection of any elector of said city.

Source: Laws 1913, c. 192, § 2, p. 570; R.S.1913, § 5313; C.S.1922, § 4536; C.S.1929, § 19-502.

19-503 Charter amendments; petition; adoption.

Whenever any petition, as above provided, shall be filed with the city clerk and shall contain the required number of bona fide electoral signatures, asking for the submission of additional or alternative articles or sections in the complete form in which such articles or sections are to read as amended, they shall be deemed to be proposed for adoption by the qualified electors of said city with the same force and effect as if proposed by said convention, and the article or section which receives the majority of all the votes cast for and against said additional or alternative articles or sections shall be declared adopted, and certified to the Secretary of State, a copy deposited in the archives of the city, and shall become the charter or part thereof, of said city.

Source: Laws 1913, c. 192, § 3, p. 570; R.S.1913, § 5314; C.S.1922, § 4537; C.S.1929, § 19-503.

ARTICLE 6

CITY MANAGER PLAN
(Applicable to cities of 1,000 population or more and less than 200,000.)

(a) GENERAL PROVISIONS

Section
19-601. City, defined.
19-602. Population; how determined.
19-603. Charter and general laws; force and effect.
19-604. Ordinances; resolutions; regulations; force and effect.

(b) ADOPTION AND ABANDONMENT OF PLAN

19-605. City manager plan; petition for adoption; election.
19-606. City manager plan; adoption or abandonment; election.
19-607. Election; ballot; form.
19-608. Election; adoption of plan; when effective; rejection; resubmission.
19-609. City manager plan; abandonment; petition; election.
19-610. Local charters; right to adopt.

(c) CITY COUNCIL

19-611. City council; powers.
19-612. Council members; nomination and election; terms.

Section

(i) PETITION FOR ABANDONMENT

(a) GENERAL PROVISIONS

19-601 City, defined.

The term city as used in sections 19-601 to 19-648 includes any city having a population of one thousand or more and less than two hundred thousand.

Source: Laws 1917, c. 208, § 1, p. 497; C.S.1922, § 4538; C.S.1929, § 19-601; R.S.1943, § 19-601; Laws 1955, c. 55, § 4, p. 180; Laws 1963, c. 89, § 2, p. 300; Laws 1985, LB 372, § 1; Laws 1998, LB 893, § 1.

The sections in this article relate to cities operating under the city manager plan. State ex rel. Warren v. Kleman, 178 Neb. 564, 134 N.W.2d 254 (1965).

19-602 Population; how determined.

For the purposes of sections 19-601 to 19-648, the population of a city shall be the number of inhabitants as ascertained by the last state census or United States census, whichever shall be later.

Source: Laws 1917, c. 208, § 2, p. 498; C.S.1922, § 4539; C.S.1929, § 19-602.

19-603 Charter and general laws; force and effect.

The charter and all general laws governing any city shall continue in full force and effect, except that insofar as any provisions thereof are inconsistent with sections 19-601 to 19-648, the same shall be superseded in any city upon the taking effect of sections 19-601 to 19-648 therein.

Source: Laws 1917, c. 208, § 3, p. 498; C.S.1922, § 4540; C.S.1929, § 19-603.

19-604 Ordinances; resolutions; regulations; force and effect.

All valid ordinances, resolutions, orders or other regulations of a city, or any authorized body or official thereof, existing at the time sections 19-601 to 19-648 become applicable to the city, and not inconsistent with their provisions, shall continue in full force and effect until amended, repealed or otherwise superseded.

Source: Laws 1917, c. 208, § 4, p. 498; C.S.1922, § 4541; C.S.1929, § 19-604.

(b) ADOPTION AND ABANDONMENT OF PLAN

19-605 City manager plan; petition for adoption; election.

Whenever electors of any city, equal in number to twenty percent of those who voted at the last regular city election, shall file a petition with the city clerk, asking that the question of organizing the city under the plan of government provided in sections 19-601 to 19-648 be submitted to the electors thereof, said clerk shall within one week certify that fact to the council of the city, and the council shall, within thirty days, adopt a resolution to provide for

submitting such question at a special election to be held not less than thirty days after the adoption of the resolution except as provided in this section. Any such election shall be conducted in accordance with the general election laws of the state except as otherwise provided in sections 19-601 to 19-648. If such petition is filed not more than one hundred eighty days nor less than seventy days prior to the regular municipal statewide primary or statewide general election, the council shall adopt a resolution to provide for submitting such question at the next such election.

Source: Laws 1917, c. 208, § 6, p. 498; C.S.1922, § 4543; C.S.1929, § 19-606; R.S.1943, § 19-605; Laws 1974, LB 897, § 2.

19-606 City manager plan; adoption or abandonment; election.

The proposition to adopt or to abandon the plan of government provided in sections 19-601 to 19-648, shall not be submitted to the electors of any city later than sixty days before a regular municipal election. If, in any city, a sufficient petition is filed requiring that the question of adopting the commission plan of city government, or the question of choosing a convention to frame a charter, be submitted to the electors thereof, or if an ordinance providing for the election of such a charter convention is passed by the city council, the proposition to adopt the plan of government provided in sections 19-601 to 19-648 shall not be submitted in that city so long as the question of adopting such plan of government, or of choosing such convention, or adopting a charter framed by it, is pending.

Source: Laws 1917, c. 208, § 7, p. 498; C.S.1922, § 4544; C.S.1929, § 19-607.

Cross References

Petition for abandonment of city manager plan of government, see section 19-662.

19-607 Election; ballot; form.

In submitting the question of adopting the plan of government provided in sections 19-601 to 19-648 the city council shall cause to be printed on the ballots the following question: Shall the city manager plan of government as provided in (giving the legal designation of sections 19-601 to 19-648 as published) be adopted? Immediately following such question there shall be printed on the ballots the following propositions in the order here set forth: For the adoption of the city manager plan of government and Against the adoption of the city manager plan of government. Immediately to the left of each proposition shall be placed a square in which the electors may vote by making a cross (X) mark.

Source: Laws 1917, c. 208, § 8, p. 499; C.S.1922, § 4545; C.S.1929, § 19-608.

19-608 Election; adoption of plan; when effective; rejection; resubmission.

If the plan of government provided in sections 19-601 to 19-648 is approved by a majority of the electors voting thereon, it shall go into effect immediately, insofar as it applies to the nomination and election of officers provided for herein, and in all other respects it shall go into effect on the first Monday following the next regular municipal election. If the proposition to adopt the

provisions of sections 19-601 to 19-648 is rejected by the electors, it shall not again be submitted in that city within two years thereafter.

Source: Laws 1917, c. 208, § 9, p. 499; C.S.1922, § 4546; C.S.1929, § 19-609.

19-609 City manager plan; abandonment; petition; election.

Any city which shall have operated four years under the plan provided in sections 19-601 to 19-648 may abandon such organization and either accept the provisions of the general law applicable to such city, or adopt any other optional plan or organization open thereto. The petition for abandonment shall designate the plan desired, and the following proposition shall be submitted: Shall the city of (.....) abandon the city manager plan of government and adopt the (name of plan) as provided in (giving the legal designation of the law as published)? If a majority of the votes cast thereon be in favor of such proposition, the officers elected at the next regular municipal election shall be those prescribed by the laws designated in the petition, and upon the qualification of such officers the city shall become organized under said law. Such change shall not affect the property right or ability of any nature of such city, but shall extend merely to its form of government.

Source: Laws 1917, c. 208, § 10, p. 499; C.S.1922, § 4547; C.S.1929, § 19-610.

Cross References

Petition for abandonment of city manager plan of government, see section 19-662.

19-610 Local charters; right to adopt.

Nothing in sections 19-601 to 19-648 shall be construed to interfere with or prevent any city at any time from framing and adopting a charter for its own government as provided by the state Constitution. In exercising the right to frame its own charter, it shall not be obligatory upon any city to adopt or retain any of the provisions of sections 19-601 to 19-648.

Source: Laws 1917, c. 208, § 11, p. 500; C.S.1922, § 4548; C.S.1929, § 19-611.

(c) CITY COUNCIL

19-611 City council; powers.

The governing body of the city shall be the city council, which shall exercise all the powers which have been or may be conferred upon the city by the Constitution and laws of the state, except as herein otherwise provided.

Source: Laws 1917, c. 208, § 12, p. 500; C.S.1922, § 4549; C.S.1929, § 19-612.

19-612 Council members; nomination and election; terms.

City council members in a city under the city manager plan shall be nominated and elected as provided in section 32-538. The terms of office of all such members shall commence on the first regular meeting of such board in December following their election.

Source: Laws 1917, c. 208, § 13, p. 500; C.S.1922, § 4550; C.S.1929, § 19-613; R.S.1943, § 19-612; Laws 1963, c. 90, § 1, p. 311;

Laws 1967, c. 90, § 1, p. 279; Laws 1969, c. 257, § 21, p. 943; Laws 1972, LB 661, § 6; Laws 1975, LB 323, § 3; Laws 1977, LB 201, § 6; Laws 1979, LB 80, § 54; Laws 1994, LB 76, § 518.

19-613 Council members; qualifications; forfeiture of office; grounds.

Members of the council shall be residents and registered voters of the city and shall hold no other employment with the city. Any council member who ceases to possess any of the qualifications required by this section or who has been convicted of a crime while in office shall forthwith forfeit such office.

Source: Laws 1917, c. 208, § 14, p. 500; C.S.1922, § 4551; C.S.1929, § 19-614; R.S.1943, § 19-613; Laws 1971, LB 494, § 6; Laws 1975, LB 453, § 2; Laws 1977, LB 50, § 1; Laws 1979, LB 80, § 55; Laws 1983, LB 370, § 9; Laws 1990, LB 931, § 4; Laws 1991, LB 12, § 3; Laws 1994, LB 76, § 519.

Cross References

Vacancies, see sections 32-568 and 32-569.

19-613.01 Council members; elected from a ward; election; ballots.

Any council member to be elected from a ward, or an appointed successor in the event of a vacancy, shall be a resident and a registered voter of such ward. The council member shall be nominated and elected in the same manner as provided for at-large candidates, except that only residents and registered voters of the ward may participate in the signing of nomination petitions. All nominating petitions and ballots shall clearly identify the ward from which such person shall be a candidate. The ballots within a ward shall not contain the names of ward candidates from other wards.

Source: Laws 1967, c. 90, § 2, p. 280; Laws 1972, LB 661, § 7; Laws 1975, LB 323, § 4; Laws 1979, LB 80, § 56; Laws 1984, LB 975, § 12; Laws 1994, LB 76, § 520.

19-614 Repealed. Laws 1994, LB 76, § 615.

19-615 Council; meetings; quorum.

At the first regular meeting in December following the general election in every even-numbered year, the council shall meet in the usual place for holding meetings and the newly elected council members shall assume the duties of their office. Thereafter the council shall meet at such time and place as it may prescribe by ordinance, but not less frequently than twice each month in cities of the first class. The mayor, any two council members, or the city manager may call special meetings of the council upon at least six hours' written notice. The meetings of the council and sessions of committees of the council shall be public. A majority of the members shall constitute a quorum, but a majority vote of all the members elected shall be required to pass any measure or elect to any office.

Source: Laws 1917, c. 208, § 16, p. 501; C.S.1922, § 4553; C.S.1929, § 19-616; R.S.1943, § 19-615; Laws 1972, LB 661, § 8; Laws 1974, LB 609, § 1; Laws 1977, LB 203, § 1; Laws 1979, LB 80, § 57; Laws 2001, LB 484, § 3.

To be valid, a resolution recommending issuance or refusal of liquor license must be adopted by a majority of all elected members of city council. Hadlock v. Nebraska Liquor Control Commission, 193 Neb. 721, 228 N.W.2d 887 (1975).

19-616 Appointive or elected official; compensation; no change during term of office.

The annual compensation of the mayor and a council member in cities adopting sections 19-601 to 19-648 shall be payable quarterly in equal installments and shall be fixed by the council. The emoluments of any appointive or elective officer shall not be increased or diminished during the term for which such officer was elected or appointed, except that when there are officers elected or appointed to the council, or a board or commission having more than one member and the terms of one or more members commence and end at different times, the compensation of all members of such council, board, or commission may be increased or diminished at the beginning of the full term of any member thereof. No person who has resigned or vacated any office shall be eligible to the same during the time for which such person was elected or appointed when, during the same time, the emoluments have been increased. For each absence from regular meetings of the council, unless authorized by a two-thirds vote of all members thereof, there shall be deducted a sum equal to two percent of such annual salary.

Source: Laws 1917, c. 208, § 17, p. 501; C.S.1922, § 4554; C.S.1929, § 19-617; R.S.1943, § 19-616; Laws 1969, c. 113, § 1, p. 515; Laws 1979, LB 80, § 58; Laws 2002, LB 1054, § 2.

Cross References

Vacancies, how filled, see sections 19-3101 and 32-560 to 32-573.

19-617 Council; organization, when; president; powers.

At the first regular meeting in December following the general election in every even-numbered year, the council shall elect one of its members as president, who shall be ex officio mayor, and another as vice president, who shall serve in the absence of the president. In the absence of the president and the vice president, the council may elect a temporary chairperson. The president shall preside over the council and have a voice and vote in its proceedings but no veto. The president shall be recognized as the official head of the city for all ceremonial purposes, by the courts for the purpose of serving civil process, and by the Governor for military purposes. In addition, the president shall exercise such other powers and perform such duties, not inconsistent with sections 19-601 to 19-648, as are conferred upon the mayor of the city.

Source: Laws 1917, c. 208, § 18, p. 502; C.S.1922, § 4555; C.S.1929, § 19-618; R.S.1943, § 19-617; Laws 1972, LB 661, § 9; Laws 1977, LB 203, § 2; Laws 1978, LB 591, § 1; Laws 2001, LB 484, § 4.

19-617.01 Repealed. Laws 1988, LB 809, § 1.

19-618 Council; city manager; appointment; investigatory powers of council.

The council shall choose a city manager, a city clerk, and, where required, a civil service commission, but no member of the council shall be chosen as manager or as a member of the civil service commission. Neither the council nor any of its committees or members shall dictate the appointment of any person to office or employment by the city manager or in any manner seek to

prevent him or her from exercising his or her own judgment in the appointment of officers and employees in the administrative service. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the city manager, and neither the council nor any member thereof shall give orders to any of the subordinates of the city manager, either publicly or privately. The council, or a committee thereof, may investigate the affairs of any department or the official acts and conduct of any city officer. It shall have power to administer oaths and compel the attendance of witnesses and the production of books and papers and may punish for contempt any person failing to obey its subpoena or refusing to testify. No person shall be excused from testifying, but his or her testimony shall not be used against him or her in any criminal proceeding other than for perjury.

Source: Laws 1917, c. 208, § 19, p. 502; C.S.1922, § 4556; C.S.1929, § 19-619; R.S.1943, § 19-618; Laws 1985, LB 372, § 2.

19-619 Appropriations and expenses; revision; power of first council.

If, at the beginning of the term of office of the first council elected under sections 19-601 to 19-648, the appropriations or distribution of the expenditures of the city government for the current fiscal year have been made, the council shall have power, by ordinance, to repeal or revise such distribution, or to make additional appropriations within the limit of the total taxes levied for the year.

Source: Laws 1917, c. 208, § 20, p. 503; C.S.1922, § 4557; C.S.1929, § 19-620.

19-620 Council; departments and offices; control.

The council shall have authority, subject to the provisions of sections 19-601 to 19-648, to create and discontinue departments, offices and employments, and by ordinance or resolution to prescribe, limit or change the compensation of such officers and employees; *Provided, however,* that nothing herein contained shall be so construed as to interfere with or to affect the office or powers of city school or school district officers, or of any officer named in the state Constitution.

Source: Laws 1917, c. 208, § 21, p. 503; C.S.1922, § 4558; C.S.1929, § 19-621.

(d) NOMINATIONS AND ELECTIONS

19-621 Repealed. Laws 1994, LB 76, § 615.

19-622 Repealed. Laws 1974, LB 897, § 15.

19-623 Repealed. Laws 1994, LB 76, § 615.

19-624 Repealed. Laws 1994, LB 76, § 615.

19-625 Repealed. Laws 1969, c. 257, § 44.

19-626 Repealed. Laws 1969, c. 257, § 44.

19-627 Repealed. Laws 1994, LB 76, § 615.

(e) RECALL

19-628 Repealed. Laws 1984, LB 975, § 14.

19-629 Repealed. Laws 1984, LB 975, § 14.

19-630 Repealed. Laws 1984, LB 975, § 14.

19-631 Repealed. Laws 1984, LB 975, § 14.

19-632 Repealed. Laws 1984, LB 975, § 14.

19-633 Repealed. Laws 1984, LB 975, § 14.

19-634 Repealed. Laws 1984, LB 975, § 14.

19-635 Repealed. Laws 1984, LB 975, § 14.

19-636 Repealed. Laws 1984, LB 975, § 14.

19-637 Repealed. Laws 1984, LB 975, § 14.

(f) INITIATIVE AND REFERENDUM

19-638 Repealed. Laws 1982, LB 807, § 46.

19-639 Repealed. Laws 1982, LB 807, § 46.

19-640 Repealed. Laws 1982, LB 807, § 46.

19-641 Repealed. Laws 1982, LB 807, § 46.

19-642 Repealed. Laws 1973, LB 561, § 11.

19-643 Repealed. Laws 1982, LB 807, § 46.

19-644 Repealed. Laws 1982, LB 807, § 46.

(g) CITY MANAGER

19-645 City manager; how chosen; qualifications; salary.

The chief executive officer of the city shall be a city manager, who shall be responsible for the proper administration of all affairs of the city. He shall be chosen by the council for an indefinite period, solely on the basis of administrative qualifications, and need not be a resident of the city or state when appointed. He shall hold office at the pleasure of the council, and receive such salary as it shall fix by ordinance. During the absence or disability of the city manager the council shall designate some properly qualified person to perform the duties of the office.

Source: Laws 1917, c. 208, § 46, p. 510; C.S.1922, § 4583; C.S.1929, § 19-646.

19-646 City manager; powers; duties.

The powers and duties of the city manager shall be (1) to see that the laws and ordinances are enforced, (2) to appoint and remove all heads of departments and all subordinate officers and employees in the departments in both

the classified and unclassified service, which appointments shall be upon merit and fitness alone, and in the classified service all appointments and removals shall be subject to the civil service provisions of the Civil Service Act, (3) to exercise control over all departments and divisions thereof that may be created by the council, (4) to attend all meetings of the council with the right to take part in the discussion but not to vote, (5) to recommend to the council for adoption such measures as he or she may deem necessary or expedient, (6) to prepare the annual budget and keep the council fully advised as to the financial condition and needs of the city, and (7) to perform such other duties as may be required of him or her by sections 19-601 to 19-648 or by ordinance or resolution of the council.

Source: Laws 1917, c. 208, § 47, p. 511; C.S.1922, § 4584; C.S.1929, § 19-647; R.S.1943, § 19-646; Laws 1985, LB 372, § 3.

Cross References

Civil Service Act, see section 19-1825.

19-647 City manager; investigatory and inquisitional powers.

The city manager may investigate at any time the affairs of any department or the conduct of any officer or employee. He, or any person or persons appointed by him for the purpose, shall have the same power to compel the attendance of witnesses and the production of books and papers and other evidence, and to punish for contempt, which has herein been conferred upon the council.

Source: Laws 1917, c. 208, § 48, p. 511; C.S.1922, § 4585; C.S.1929, § 19-648.

19-648 City manager; bond; premium; payment.

Before taking office the city manager shall file with the city clerk a surety company bond, conditioned upon the honest and faithful performance of his duties, in such sum as shall be fixed by the council. The premium of this bond shall be paid by the city.

Source: Laws 1917, c. 208, § 49, p. 511; C.S.1922, § 4586; C.S.1929, § 19-649.

(h) CIVIL SERVICE BOARD

19-649 Repealed. Laws 1985, LB 372, § 27.

19-650 Repealed. Laws 1985, LB 372, § 27.

19-651 Repealed. Laws 1985, LB 372, § 27.

19-652 Repealed. Laws 1985, LB 372, § 27.

19-653 Repealed. Laws 1985, LB 372, § 27.

19-654 Repealed. Laws 1985, LB 372, § 27.

19-655 Repealed. Laws 1985, LB 372, § 27.

19-656 Repealed. Laws 1985, LB 372, § 27.

19-657 Repealed. Laws 1985, LB 372, § 27.

19-658 Repealed. Laws 1985, LB 372, § 27.

19-659 Repealed. Laws 1985, LB 372, § 27.

19-660 Repealed. Laws 1985, LB 372, § 27.

19-661 Repealed. Laws 1985, LB 372, § 27.

(i) PETITION FOR ABANDONMENT

19-662 Plan of government; abandoning; petition; filing; election.

Whenever electors of any city, equal in number to thirty percent of those who voted at the last regular city election, shall file a petition with the city clerk, asking that the question of abandoning the plan of government provided by the provisions of Chapter 19, article 6, be submitted to the electors thereof, such clerk shall within one week certify that fact to the council of the city, and the council shall, within thirty days, adopt a resolution to provide for submitting such question at the next regular municipal election after adoption of the resolution. When such a petition is filed with the city clerk within a seventy-day period prior to a regular municipal election, the resolution adopted by the city council shall provide for the submission of such question at the second regular municipal election thereafter as provided by law.

Source: Laws 1974, LB 897, § 3.

ARTICLE 7
EMINENT DOMAIN

Section

19-701 Public utility; condemnation; election; resubmission.

Whenever the qualified electors of any city of the primary class, city of the first class, city of the second class, or village shall vote at any general or special election to acquire and appropriate, by an exercise of the power of eminent domain, any waterworks, waterworks system, electric light plant, electric light and power plant, heating plant, street railway, or street railway system, located or operating within or partly within and partly without such city or village, together with real and personal property needed or useful in connection therewith, if the main part of such works, plant, or system be within any such city or village and even though a franchise for the construction and operating of any such works, plant, or system may or may not have expired, then any such city or village shall possess and have the power and authority, by an exercise of the power of eminent domain to appropriate and acquire, for the public use of

any such city or village, any such works, plant, railway, pipelines, or system. If any public utility properties supplying different kinds of service to such a city or village are operated as one unit and under one management, the right to acquire and appropriate, as provided in sections 19-701 to 19-707, shall cover and extend to the entire property and not to any divided or segregated part thereof, and the duly constituted authorities of any such city or village shall have the power to submit such question or proposition, in the usual manner, to the qualified electors of any such city or village at any general city or village election or at any special city or village election and may submit the proposition in connection with any city or village special election called for any other purpose, and the votes cast thereon shall be canvassed and the result found and declared as in any other city or village election. Such city or village authorities shall submit such question at any such election whenever a petition asking for such submission, signed by the legal voters of such a city or village equaling in number fifteen percent of the votes cast at the last general city or village election, and filed in the city or village clerk's office at least sixty days before the election at which the submission is asked, but if the question of acquiring any particular plant or system has been submitted once, the same question shall not again be submitted to the voters of such a city or village until two years shall have elapsed from and after the date of the findings by the board of appraisers regarding the value of the property and the city's or village's rejection of the same.

Source: Laws 1919, c. 188, § 1, p. 422; C.S.1922, § 4600; C.S.1929, § 19-701; Laws 1941, c. 26, § 1, p. 122; C.S.Supp.,1941, § 19-708; R.S.1943, § 19-701; Laws 1955, c. 56, § 1, p. 183; Laws 2002, LB 384, § 29.

1. Constitutionality
2. Procedure
3. Election
4. Miscellaneous

1. Constitutionality

Act held constitutional. May v. City of Kearney, 145 Neb. 475, 17 N.W.2d 448 (1945); City of Mitchell v. Western Public Service Co., 124 Neb. 248, 246 N.W. 484 (1933).

Constitutionality of this and succeeding sections authorizing condemnation of property of public utility sustained. Central Electric & Gas Co. v. City of Stromsburg, 192 F.Supp. 280 (D. Neb. 1960).

2. Procedure

Where the Supreme Court enjoined a city and its officials from issuing bonds for purpose of raising money to tender an award in proceedings to condemn property of power company, city could not proceed further until another election was held. City of Kearney v. Consumers Public Power Dist., 146 Neb. 29, 18 N.W.2d 437 (1945).

Proceeding in Supreme Court to vacate appointment of members of court of condemnation is not within jurisdiction of Supreme Court. Consumers Public Power Dist. v. City of Sidney, 144 Neb. 6, 12 N.W.2d 104 (1945).

Condemnation proceeding was not a civil action subject to removal to federal court. Village of Walthill v. Iowa Electric L. & P. Co., 228 F.2d 647 (8th Cir. 1956).

3. Election

Proposition of acquisition of gas plant was properly submitted to voters. Talbott v. City of Lyons, 171 Neb. 186, 105 N.W.2d 918 (1960).

Notice of election was sufficient. Central Electric & Gas Co. v. City of Stromsburg, 289 F.2d 217 (8th Cir. 1961).

Ballot title submitting question of proposition to acquire complete gas system was sufficient. Iowa Electric Light & Power Co. v. City of Lyons, 166 F.Supp. 676 (D. Neb. 1958), affirmed 265 F.2d 273 (1959).

4. Miscellaneous

All property, and not segregated portions, must be taken. Consumers Public Power Dist. v. Eldred, 146 Neb. 926, 22 N.W.2d 188 (1946).

Authority of court of condemnation is limited to determination of just compensation. Kansas-Nebraska Nat. Gas Co. v. Village of Deshler, 192 F.Supp. 303 (D. Neb. 1960).

Village could not acquire by eminent domain gas distribution system only. Village of Walthill v. Iowa Electric Light & Power Co., 125 F.Supp. 859 (D. Neb. 1954).

19-702 Court of condemnation; members; hearing; parties; notice.

If the election at which the question is submitted is a special election and sixty percent of the votes cast upon such proposition are in favor thereof, or if the election at which the question is submitted is a general election and a

majority of the votes cast upon such proposition are in favor thereof, then the city council or village board of trustees or officer possessing the power and duty to ascertain and declare the result of such election shall certify such result immediately to the Supreme Court of the state. The Supreme Court shall within thirty days after the receipt of such certificate, appoint three district judges from three of the judicial districts of the state, and said three judges shall constitute a court of condemnation for the ascertainment and finding of the value of any such plant, works or system and the said Supreme Court shall enter an order requiring such judges to attend as a court of condemnation at the county seat in which such city or village is located within such time as may be stated in such order. Said district judges shall so attend as ordered and such court of condemnation at such time it meets shall organize and proceed with its duties. It may adjourn from time to time, and it shall fix a time for the appearance before it of all such corporations or persons as the court may deem necessary to be made parties to such condemnation proceedings or which the city, the village or the corporation or persons owning any such plant, system or works may desire to have made a party to such proceedings. If such time of appearance shall occur after any proceedings have begun, they shall be reviewed by the court, as it may direct, to give all parties full opportunity to be heard. All corporations or persons, including all mortgagees, bondholders, trustees for bondholders, leaseholders, or any other party or person claiming any interest in or lien upon any such works, plant or system may be made parties to such condemnation proceedings, and shall be served with notice of such proceedings and the time and place of the meeting of the court of condemnation in the same manner and for such length of time as the service of a summons in cases begun in the district court of the state, either by personal service or service by publication, and actual personal service of notice within or without the state shall supersede the necessity of notice by publication.

Source: Laws 1919, c. 188, § 2, p. 423; C.S.1922, § 4601; C.S.1929, § 19-702; Laws 1941, c. 26, § 2, p. 123; C.S.Supp.,1941, § 19-709.

Appointment of court of condemnation is a ministerial act and in no way enlarges jurisdiction of Supreme Court. Consumers Public Power Dist. v. City of Sidney, 144 Neb. 6, 12 N.W.2d 104 (1943).

Appointment of members of condemnation court is a ministerial act only. Village of Walthill v. Iowa Electric L. & P. Co., 228 F.2d 647 (8th Cir. 1956).

Where proposition is submitted at general election, a majority of votes cast at election is sufficient to carry the proposition. Central Electric & Gas Co. v. City of Stromsburg, 192 F.Supp. 280 (D. Neb. 1960).

19-703 Court of condemnation; powers and duties; vacancy, how filled.

Such court of condemnation shall have full power to summon and swear witnesses, take evidence, order the taking of depositions, and require the production of any and all books and papers deemed necessary for a full investigation and ascertainment of the value of any such works, plant or system; *Provided*, that when part of the public utilities appropriated under sections 19-701 to 19-707 extends beyond the territory within which the city or village exercising the right of eminent domain has a right to operate the same, the court of condemnation, in determining the damages caused by the appropriation thereof, shall take into consideration the fact that such portion of the utility beyond such territory is being detached and not appropriated by the city or village, and the court of condemnation shall award damages by reason of such detachment and the destruction in value and usefulness of the detached and unappropriated property as it will remain and be left after the detachment

and appropriation. Such court of condemnation may appoint a reporter of its proceedings who shall report and preserve all evidence introduced before it. Such court shall have all the powers and perform all the duties of commissioners in the condemnation and ascertainment of the value and in making of an award of all property of any such works, plant or system. The clerk of the district court, in the county where such city or village is located, shall attend upon said court of condemnation and perform such duties, as the clerk thereof, as such condemnation court may direct. The sheriff of any such county, or any of his deputies shall attend upon said court and shall have power to serve summons, subpoenas, and all other orders or papers ordered to be served by such condemnation court. In case of vacancy in said court of condemnation such vacancy shall be filled by the Supreme Court if the vacancy occurs while the court is in session, and if it occurs while the court is not in session, then by the Chief Justice of said court.

Source: Laws 1919, c. 188, § 3, p. 424; C.S.1922, § 4602; C.S.1929, § 19-703; Laws 1941, c. 26, § 3, p. 124; C.S.Supp.,1941, § 19-710.

Condemnation court's authority is limited to fixing the value of the property. Village of Walthill v. Iowa Electric L. & P. Co., 228 F.2d 647 (8th Cir. 1956).

19-704 Court of condemnation; award; appeal; procedure; effect of appeal.

Upon the determination and filing of a finding of the value of any such plant, works or system by the said court of condemnation, such city or village shall then have the right and power by ordinance duly passed by its duly constituted authorities, to elect to abandon such condemnation proceedings. If it does not elect within ninety days after the finding and filing of value, then the person or corporation owning any such plant, works or system may appeal from the finding of value and award by the said court of condemnation to the district court by filing within twenty days from the expiration of the said time given the city or village to exercise its rights of abandonment, with the city clerk of any such city or the village clerk of any such village, a bond, to be approved by him, conditioned for the payment of all costs which may be made on any such appeal, and by filing in said district court, within ninety days after such bond is filed, a transcript of the proceedings before such condemnation court including the evidence taken before it certified by the clerk, reporter, and judges of such court. The appeal in the district court shall be tried and determined upon the pleadings, proceedings, and evidence embraced in such transcript; *Provided*, that if such appeal is taken the city or village, upon tendering the amount of the value and award made by such condemnation court, to the party owning any such plant, works or system, shall, notwithstanding such appeal, have the right and power to take immediate possession of any such plant, works or system, and the city or village authorities, without vote of the people, shall have the power, if necessary, to issue and sell bonds of the city or village to provide funds to make such tender.

Source: Laws 1919, c. 188, § 4, p. 425; C.S.1922, § 4603; C.S.1929, § 19-704; Laws 1941, c. 26, § 4, p. 125; C.S.Supp.,1941, § 19-711.

General obligation bonds were issued by city to tender amount of award. Talbott v. City of Lyons, 171 Neb. 186, 105 N.W.2d 918 (1960).

Bonds purporting to pledge revenue and earnings of electric light and power plant cannot be issued without vote of people. May v. City of Kearney, 145 Neb. 475, 17 N.W.2d 448 (1945).

Municipality is given ninety days after determination of value to abandon proceedings. Village of Walthill v. Iowa Electric L. & P. Co., 228 F.2d 647 (8th Cir. 1956).

Provision is made for making up and preservation of record of the hearing before court of condemnation. Kansas-Nebraska Nat. Gas Co. v. Village of Deshler, 192 F.Supp. 303 (D. Neb. 1960).

19-705 Court of condemnation; appeal; judgment; bonds.

Upon the hearing of such appeal in the district court, judgment shall be pronounced, as in ordinary cases, for the value of any such works, plant, or system. The city, village, party, or corporation owning any such plant, works, or system may appeal to the Court of Appeals. Upon a final judgment being pronounced as to the value of any such plant, works, or system, the duly constituted authorities of any such city or village shall issue and sell bonds of any such city or village to pay the amount of such value and judgment without a vote of the people.

Source: Laws 1919, c. 188, § 5, p. 426; C.S.1922, § 4604; C.S.1929, § 19-705; Laws 1941, c. 26, § 5, p. 125; C.S.Supp.,1941, § 19-712; R.S.1943, § 19-705; Laws 1991, LB 732, § 22.

19-706 Court of condemnation; members; compensation; costs; witness fees.

The district judges constituting the aforesaid court of condemnation shall each receive from and be paid by such city or village fifteen dollars per day for their services and their necessary traveling expenses, hotel bills, and all other necessary expenses incurred while in attendance upon the sittings of such court of condemnation, with reimbursement for expenses to be made as provided in sections 81-1174 to 81-1177 for state employees, and the city or village shall pay the reporter that may be appointed by said court such an amount as said court of condemnation shall allow him or her. The sheriff shall serve all such summons, subpoenas, or other orders or papers ordered issued or served by such condemnation court at the same rate and compensation for which he or she serves like papers issued by the district court, but shall account for all such compensation to the county as is required by him or her under the law governing his or her duties as sheriff of the county. The court of condemnation shall have power to apportion the cost made before it, between the city or village and the corporation or party owning any such plant, works, or system and the city or village shall provide for and pay all such costs or portion of costs as the said court shall order, and shall also make provisions for the necessary funds and expenses to carry on the proceedings of such condemnation court, from time to time while such proceedings are in progress, but in the event the city or village elects to abandon the condemnation proceedings, as aforesaid, then the city or village shall pay all the costs made before such condemnation court; *Provided*, if services of expert witnesses are secured then their fees or compensation to be taxed and paid as costs shall be only such amount as the said condemnation court shall fix, notwithstanding any contract between such experts and the party producing them to pay them more, but a contract to pay them more than the court shall allow as costs may be enforced between any such experts and the litigant or party employing them. The costs made by any such appeal or appeals shall be adjudged against the party defeated in such appeal in the same degree and manner as is done under the general court practice relating to appellate proceedings.

Source: Laws 1919, c. 188, § 6, p. 426; C.S.1922, § 4605; C.S.1929, § 19-706; Laws 1941, c. 26, § 6, p. 126; C.S.Supp.,1941, § 19-713; R.S.1943, § 19-706; Laws 1981, LB 204, § 18.

19-707 Powers; on what cities conferred.

The powers herein vested in the city or village shall be conferred upon cities of the primary, first or second classes or villages, whether or not such city or village is operating under a home rule charter adopted pursuant to Article XI, Constitution of Nebraska.

Source: Laws 1919, c. 188, § 7, p. 427; C.S.1922, § 4606; C.S.1929, § 19-707; Laws 1941, c. 26, § 7, p. 127; C.S.Supp.,1941, § 19-714.

19-708 Public utility; acquisition by city or village of distribution system; wholesale service.

Whenever the local distribution system of any public utility, has been acquired by any city or village under the provisions of Chapter 19, article 7, the condemnee, if it is also the owner of any transmission system, whether by wire, pipeline, or otherwise, from any other point to such city or village shall, at the option of such city or village, be required to render wholesale service to such city or village whether otherwise acting as wholesaler or not; *Provided*, that if the condemnee is a public power district subject to the provisions of section 70-626.01, the obligations of the public power district to the condemner under this section shall be no greater than to other cities and villages under said section 70-626.01.

Source: Laws 1957, c. 44, § 1, p. 220.

Condemnation proceeding was not invalidated by inclusion in notice of election of right to purchase gas at wholesale under this section. Kansas-Nebraska Nat. Gas Co. v. Village of Deshler, 288 F.2d 717 (8th Cir. 1961).

Right of village to purchase gas at wholesale, as an incident to condemnation, is recognized. Kansas-Nebraska Nat. Gas Co. v. Village of Deshler, 192 F.Supp. 303 (D. Neb. 1960).

19-709 Property; acquisition for public use; limitation; purposes enumerated; procedure.

The mayor and city council of any city of the first or second class or the chairperson and members of the board of trustees of any village shall have power to purchase or appropriate private property or school lands for the use of the city or village for streets, alleys, avenues, parks, parkways, boulevards, sanitary sewers, storm water sewers, public squares, public auditoriums, public fire stations, training facilities for firefighters, market places, public heating plants, power plants, gas works, electric light plants, wells, or waterworks, including mains, pipelines, and settling basins therefor, and to acquire outlets and the use of streams for sewage disposal. When necessary for the proper construction of any of the works above provided, the right of appropriation shall extend such distance as may be necessary from the corporate limits of the city or village, except that no city of the first or second class or village may acquire through the exercise of the power of eminent domain or otherwise any real estate within the zoning jurisdiction of any other city of the first or second class or village for any of the works enumerated in this section if the use for which the real estate is to be acquired would be contrary to or would not be a use permitted by the existing zoning ordinances and regulations of such other city or village, but such real estate may be acquired within the zoning jurisdiction of another city of the first or second class or village for such contrary or nonpermitted use if the governing body of such other city or village shall approve such acquisition and use. Such power shall also include the right to appropriate for any of the above purposes any plant or works already construct-

ed, or any part thereof, whether the same lies wholly within the city or village or part within and part without the city or village or beyond the corporate limits of such city or village, including all real estate, buildings, machinery, pipes, mains, hydrants, basins, reservoirs, and all appurtenances reasonably necessary thereto and a part thereof, or connected with such works or plants, and all franchises to own and operate the same, if any. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724, except as to property specifically excluded by section 76-703 and as to which sections 19-701 to 19-707 or the Municipal Natural Gas System Condemnation Act is applicable.

Source: Laws 1901, c. 18, § 50, p. 268; Laws 1901, c. 18, § 52, p. 270; Laws 1901, c. 18, § 54, p. 272; Laws 1901, c. 19, § 5, p. 316; Laws 1907, c. 14, § 1, p. 121; Laws 1909, c. 19, § 1, p. 184; R.S.1913, § 4904; C.S.1922, § 4072; C.S.1929, § 16-601; R.S. 1943, § 16-601; Laws 1951, c. 101, § 50, p. 464; Laws 1961, c. 44, § 1, p. 175; R.R.S.1943, § 16-601; Laws 1963, c. 88, § 1, p. 297; Laws 1965, c. 81, § 1, p. 318; Laws 1967, c. 91, § 1, p. 281; Laws 1971, LB 583, § 1; Laws 1977, LB 340, § 1; Laws 2002, LB 384, § 30.

Cross References

Municipal Natural Gas System Condemnation Act, see section 19-4624.

Village could acquire land through the power of eminent domain even though the use which it sought to make of the land was not permitted by its zoning ordinance. Witzel v. Village of Brainard, 208 Neb. 231, 302 N.W.2d 723 (1981).

The term ''street'' includes the portion for parkway and sidewalk. M.R.D. Corp. v. City of Bellevue, 195 Neb. 722, 240 N.W.2d 46 (1976).

19-710 City council action; rights of adjoining property owner.

In cases of appeal from an action of the city council condemning real property as a nuisance or as dangerous under the police powers of the city, the owners of the adjoining property may intervene in the action at any time before trial.

Source: Laws 1985, LB 532, § 1.

ARTICLE 8

AVIATION FIELDS

Section
19-801. Transferred to section 18-1501.
19-802. Transferred to section 18-1502.
19-803. Transferred to section 18-1503.
19-803.01. Transferred to section 18-1504.
19-803.02. Transferred to section 18-1505.
19-804. Transferred to section 18-1506.
19-805. Transferred to section 18-1507.
19-806. Transferred to section 18-1508.
19-807. Transferred to section 18-1509.

19-801 Transferred to section 18-1501.

19-802 Transferred to section 18-1502.

19-803 Transferred to section 18-1503.

19-803.01 Transferred to section 18-1504.

19-803.02 Transferred to section 18-1505.

19-804 Transferred to section 18-1506.

19-805 Transferred to section 18-1507.

19-806 Transferred to section 18-1508.

19-807 Transferred to section 18-1509.

ARTICLE 9

CITY PLANNING, ZONING

(Applicable to cities of the first or second class and villages.)

Section

19-901 Zoning regulations; power to adopt; when; comprehensive development plan; planning commission; reports and hearings; purpose; validity of plan; not applicable; when.

(1) For the purpose of promoting health, safety, morals, or the general welfare of the community, the legislative bodies in cities of the first and second class and in villages may adopt zoning regulations which regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

(2) Such powers shall be exercised only after the municipal legislative body has established a planning commission, received from its planning commission a recommended comprehensive development plan as defined in section 19-903, adopted such comprehensive development plan, and received the specific recommendation of the planning commission on the adoption or amendment of zoning regulations. The planning commission shall make a preliminary report and hold public hearings on its recommendations regarding the adoption or repeal of the comprehensive development plan and zoning regulations and shall hold public hearings thereon before submitting its final report to the legislative body. Amendments to the comprehensive plan or zoning regulations shall be considered at public hearings before submitting recommendations to the legislative body.

(3) A comprehensive development plan as defined in section 19-903 which has been adopted and not rescinded by such legislative body prior to May 17, 1967, shall be deemed to have been recommended and adopted in compliance with the procedural requirements of this section when, prior to the adoption of the plan by the legislative body, a recommendation thereon had been made to the legislative body by a zoning commission in compliance with the provisions of section 19-906, or by a planning commission appointed under the provisions of Chapter 19, article 9, regardless of whether the planning commission had been appointed as a zoning commission.

(4) The requirement that a planning commission be appointed and a comprehensive development plan be adopted shall not apply to cities of the first and second class and villages which have legally adopted a zoning ordinance prior to May 17, 1967, and which have not amended the zoning ordinance or zoning map since May 17, 1967. Such city or village shall appoint a planning commission and adopt the comprehensive plan prior to amending the zoning ordinance or zoning map.

Source: Laws 1927, c. 43, § 1, p. 182; C.S.1929, § 19-901; Laws 1941, c. 131, § 8, p. 509; C.S.Supp.,1941, § 19-901; R.S.1943, § 19-901;

Laws 1959, c. 65, § 1, p. 289; Laws 1967, c. 92, § 1, p. 283; Laws 1967, c. 93, § 1, p. 288; Laws 1974, LB 508, § 1; Laws 1975, LB 410, § 10; Laws 1977, LB 95, § 1; Laws 1983, LB 71, § 8.

When a legislative body does not specify the manner in which a comprehensive development plan is to be adopted, it is assumed that such plan may be effectively adopted via resolution. Smith v. City of Papillion, 270 Neb. 607, 705 N.W.2d 584 (2005).

Zoning powers granted to villages under section 19-901, R.R.S.1943, shall be exercised only after the municipal legislative body has appointed a planning commission, received from its planning commission a recommended comprehensive development plan as defined in section 19-903, R.R.S.1943, adopted such comprehensive development plan, and received the specific recommendation of the planning commission on the adoption or amendment of zoning regulations. Village of McGrew v. Steidley, 208 Neb. 726, 305 N.W.2d 627 (1981).

Plaintiff was not entitled to an injunction enjoining defendant from erecting a fire station in violation of a zoning ordinance. Witzel v. Village of Brainard, 208 Neb. 231, 302 N.W.2d 723 (1981).

Adoption, amendment, supplement, or change of regulations and restrictions under comprehensive development plan shall not become effective until after a public hearing of which notice has been given. Stec v. Countryside of Hastings, Inc., 190 Neb. 733, 212 N.W.2d 561 (1973).

Cities of the first class have authority to regulate and restrict the use of land located within boundaries of the city. City of Grand Island v. Ehlers, 180 Neb. 331, 142 N.W.2d 770 (1966).

This section was not applicable to zoning act relating to first class cities only. Schlientz v. City of North Platte, 172 Neb. 477, 110 N.W.2d 58 (1961).

Action of city council in zoning or rezoning must have a foundation in promoting health, safety, morals, or general welfare of the community. Weber v. City of Grand Island, 165 Neb. 827, 87 N.W.2d 575 (1958).

19-902 Building zones; regulations; uniformity; manufactured homes; certain codes excepted.

(1) For any or all of the purposes designated in section 19-901, the city council or village board may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of sections 19-901 to 19-914 and may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land within the districts. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations applicable to one district may differ from those applicable to other districts. If a regulation affects the Niobrara scenic river corridor as defined in section 72-2006 and is not incorporated within the boundaries of the municipality, the Niobrara Council shall act on the regulation as provided in section 72-2010.

(2)(a) The city council or village board shall not adopt or enforce any zoning ordinance or regulation which prohibits the use of land for a proposed residential structure for the sole reason that the proposed structure is a manufactured home if such manufactured home bears an appropriate seal which indicates that it was constructed in accordance with the standards of the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, the Nebraska Uniform Standards for Modular Housing Units Act, or the United States Department of Housing and Urban Development. The city council or village board may require that a manufactured home be located and installed according to the same standards for foundation system, permanent utility connections, setback, and minimum square footage which would apply to a site-built, single-family dwelling on the same lot. The city council or village board may also require that manufactured homes meet the following standards:

(i) The home shall have no less than nine hundred square feet of floor area;

(ii) The home shall have no less than an eighteen-foot exterior width;

(iii) The roof shall be pitched with a minimum vertical rise of two and one-half inches for each twelve inches of horizontal run;

(iv) The exterior material shall be of a color, material, and scale comparable with those existing in residential site-built, single-family construction;

(v) The home shall have a nonreflective roof material which is or simulates asphalt or wood shingles, tile, or rock; and

(vi) The home shall have wheels, axles, transporting lights, and removable towing apparatus removed.

(b) The city council or village board may not require additional standards unless such standards are uniformly applied to all single-family dwellings in the zoning district.

(c) Nothing in this subsection shall be deemed to supersede any valid restrictive covenants of record.

(3) For purposes of this section, manufactured home shall mean (a) a factory-built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280 et seq., promulgated by the United States Department of Housing and Urban Development, or (b) a modular housing unit as defined in section 71-1557 bearing a seal in accordance with the Nebraska Uniform Standards for Modular Housing Units Act.

(4) Subdivision regulations and building, plumbing, electrical, housing, fire, or health codes or similar regulations and the adoption thereof shall not be subject to sections 19-901 to 19-915.

Source: Laws 1927, c. 43, § 2, p. 183; C.S.1929, § 19-902; R.S.1943, § 19-902; Laws 1975, LB 410, § 11; Laws 1981, LB 298, § 3; Laws 1985, LB 313, § 3; Laws 1994, LB 511, § 3; Laws 1996, LB 1044, § 56; Laws 1998, LB 1073, § 3; Laws 2000, LB 1234, § 9.

Cross References

Nebraska Uniform Standards for Modular Housing Units Act, see section 71-1555.
Uniform Standard Code for Manufactured Homes and Recreational Vehicles, see section 71-4601.

19-903 Comprehensive development plan; requirements; regulations and restrictions made in accordance with plan; considerations.

The regulations and restrictions authorized by sections 19-901 to 19-915 shall be in accordance with a comprehensive development plan which shall consist of both graphic and textual material and shall be designed to accommodate anticipated long-range future growth which shall be based upon documented population and economic projections. The comprehensive development plan shall, among other possible elements, include:

(1) A land-use element which designates the proposed general distributions, general location, and extent of the uses of land for agriculture, housing, commerce, industry, recreation, education, public buildings and lands, and other categories of public and private use of land;

(2) The general location, character, and extent of existing and proposed major roads, streets, and highways, and air and other transportation routes and facilities;

(3) The general location, type, capacity, and area served of present and projected or needed community facilities including recreation facilities, schools, libraries, other public buildings, and public utilities and services; and

(4)(a) When next amended after January 1, 1995, an identification of sanitary and improvement districts, subdivisions, industrial tracts, commercial tracts, and other discrete developed areas which are or in the future may be appropri-

ate subjects for annexation and (b) a general review of the standards and qualifications that should be met to enable the municipality to undertake annexation of such areas. Failure of the plan to identify subjects for annexation or to set out standards or qualifications for annexation shall not serve as the basis for any challenge to the validity of an annexation ordinance.

Regulations shall be designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to secure safety from flood; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; to protect property against blight and depreciation; to protect the tax base; to secure economy in governmental expenditures; and to preserve, protect, and enhance historic buildings, places, and districts.

Such regulations shall be made with reasonable consideration, among other things, for the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

Source: Laws 1927, c. 43, § 3, p. 183; C.S.1929, § 19-903; R.S.1943, § 19-903; Laws 1967, c. 430, § 2, p. 1318; Laws 1967, c. 92, § 2, p. 283; Laws 1975, LB 410, § 12; Laws 1994, LB 630, § 4.

Adoption, amendment, supplement, or change of regulations and restrictions under comprehensive development plan shall not become effective until after a public hearing of which notice has been given. Stec v. Countryside of Hastings, Inc., 190 Neb. 733, 212 N.W.2d 561 (1973).

Municipal code and ordinance did not constitute a comprehensive plan contemplated by this section. City of Milford v. Schmidt, 175 Neb. 12, 120 N.W.2d 262 (1963).

Zoning regulations must be made in accordance with comprehensive plan. Weber v. City of Grand Island, 165 Neb. 827, 87 N.W.2d 575 (1958).

19-904 Building zones and regulations; creation; hearing; notice.

The legislative body of such municipality shall provide for the manner in which such regulations and restrictions, and the boundaries of such districts, shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. The legislative body shall receive the advice of the planning commission before taking definite action on any contemplated amendment, supplement, change, modification, or repeal. No such regulation, restriction, or boundary shall become effective until after separate public hearings are held by both the planning commission and the legislative body in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be given by publication thereof in a paper of general circulation in such municipality at least one time ten days prior to such hearing.

Source: Laws 1927, c. 43, § 4, p. 183; C.S.1929, § 19-904; R.S.1943, § 19-904; Laws 1955, c. 57, § 1, p. 185; Laws 1957, c. 45, § 1, p. 221; Laws 1967, c. 92, § 3, p. 284; Laws 1975, LB 410, § 13; Laws 1983, LB 71, § 9.

When a legislative body does not specify the manner in which a comprehensive development plan is to be adopted, it is assumed that such plan may be effectively adopted via resolution. Smith v. City of Papillion, 270 Neb. 607, 705 N.W.2d 584 (2005).

Adoption, amendment, supplement, or change of regulations and restrictions under comprehensive development plan shall not become effective until after a public hearing of which notice has been given. Stec v. Countryside of Hastings, Inc., 190 Neb. 733, 212 N.W.2d 561 (1973).

This section provides different procedure from that applicable to zoning act relating to first-class cities only. Schlientz v. City of North Platte, 172 Neb. 477, 110 N.W.2d 58 (1961).

Sufficiency of notice given of proposed rezoning action raised but not decided. Weber v. City of Grand Island, 165 Neb. 827, 87 N.W.2d 575 (1958).

City council has duty of providing manner in which regulations and restrictions are amended or changed. Kelley v. John, 162 Neb. 319, 75 N.W.2d 713 (1956).

19-904.01 Building zones and regulations; nonconforming use; continuation; termination.

The use of a building, structure, or land, existing and lawful at the time of the adoption of a zoning regulation, or at the time of an amendment of a regulation, may, except as provided in this section, be continued, although such use does not conform with provisions of such regulation or amendment; and such use may be extended throughout the same building if no structural alteration of such building is proposed or made for the purpose of such extension. If such nonconforming use is in fact discontinued for a period of twelve months, such right to the nonconforming use shall be forfeited and any future use of the building and premises shall conform to the regulation. The municipal legislative body may provide in any zoning regulation for the restoration, reconstruction, extension, or substitution of nonconforming uses upon such terms and conditions as may be set forth in the zoning regulations. The municipal legislative body may, in any zoning regulation, provide for the termination of nonconforming uses, either by specifying the period or periods in which nonconforming uses shall be required to cease, or by providing a formula whereby the compulsory termination of a nonconforming use may be so fixed as to allow for the recovery of amortization of the investment in the nonconformance, except that in the case of a legally erected outdoor advertising sign, display, or device, no amortization schedule shall be used.

Source: Laws 1967, c. 92, § 4, p. 285; Laws 1975, LB 410, § 14; Laws 1981, LB 241, § 3.

19-905 Building zones and regulations; changes; protest; notice; publication; posting; mailing; personal service; when not applicable.

Regulations, restrictions, and boundaries authorized to be created pursuant to sections 19-901 to 19-915 may from time to time be amended, supplemented, changed, modified, or repealed. In case of a protest against such change, signed by the owners of twenty percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent on the sides and in the rear thereof extending three hundred feet therefrom, and of those directly opposite thereto extending three hundred feet from the street frontage of such opposite lots, and such change is not in accordance with the comprehensive development plan, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the legislative body of such municipality. The provisions of section 19-904 relative to public hearings and official notice shall apply equally to all changes or amendments. In addition to the publication of the notice therein prescribed, a notice shall be posted in a conspicuous place on or near the property on which action is pending. Such notice shall not be less than eighteen inches in height and twenty-four inches in width with a white or yellow background and black letters not less than one and one-half inches in height. Such posted notice shall be so placed upon such premises that it is easily visible from the street nearest the same and shall be so posted at least ten days prior to the date of such hearing. It shall be unlawful for anyone to remove, mutilate, destroy, or change such posted notice prior to such hearing. Any person so doing shall be deemed guilty of a misdemeanor. If the record title owners of any lots included in such proposed change be

nonresidents of the municipality, then a written notice of such hearing shall be mailed by certified mail to them addressed to their last-known addresses at least ten days prior to such hearing. At the option of the legislative body of the municipality, in place of the posted notice provided above, the owners or occupants of the real estate to be zoned or rezoned and all real estate located within three hundred feet of the real estate to be zoned or rezoned may be personally served with a written notice thereof at least ten days prior to the date of the hearing, if they can be served with such notice within the county where such real estate is located. Where such notice cannot be served personally upon such owners or occupants in the county where such real estate is located, a written notice of such hearing shall be mailed to such owners or occupants addressed to their last-known addresses at least ten days prior to such hearing. The provisions of this section in reference to notice shall not apply (1) in the event of a proposed change in such regulations, restrictions, or boundaries throughout the entire area of an existing zoning district or of such municipality, or (2) in the event additional or different types of zoning districts are proposed, whether or not such additional or different districts are made applicable to areas, or parts of areas, already within a zoning district of the municipality, but only the requirements of section 19-904 shall be applicable.

Source: Laws 1927, c. 43, § 5, p. 183; C.S.1929, § 19-905; R.S.1943, § 19-905; Laws 1957, c. 45, § 2, p. 221; Laws 1967, c. 94, § 1, p. 290; Laws 1975, LB 410, § 15; Laws 2005, LB 161, § 8.

The fact that a person is entitled to notice of an administrative hearing because he or she owns property adjacent or very close to the property in issue supports the conclusion that such a person would have standing in a corresponding zoning case. Smith v. City of Papillion, 270 Neb. 607, 705 N.W.2d 584 (2005).

Approval of a conditional use permit in nature of special exception use is ordinarily subject to statutory requirement of a favorable three-fourths majority vote if requisite protests are made against change or supplement of regulations or restrictions. Stec v. Countryside of Hastings, Inc., 190 Neb. 733, 212 N.W.2d 561 (1973).

Amendment of zoning ordinance must be made in accordance with comprehensive plan. Weber v. City of Grand Island, 165 Neb. 827, 87 N.W.2d 575 (1958).

19-906 Repealed. Laws 1967, c. 92, § 7.

19-907 Board of adjustment; appointment; restriction on powers.

Except as provided in section 19-912.01, the local legislative body shall provide for the appointment of a board of adjustment. Any actions taken by the board of adjustment shall not exceed the powers granted by section 19-910.

Source: Laws 1927, c. 43, § 7, p. 184; C.S.1929, § 19-907; R.S.1943, § 19-907; Laws 1975, LB 410, § 16; Laws 1978, LB 186, § 5; Laws 1998, LB 901, § 1.

19-908 Board of adjustment; members; term; vacancy; adopt rules; meetings; records; open to public.

The board of adjustment shall consist of five regular members, plus one additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason, each to be appointed for a term of three years and removable for cause by the appointing authority upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the board of adjustment shall be appointed from the membership of the planning commission, and the loss of membership on the planning commission by such member shall also result in his or her immediate loss of membership on the board of adjustment and the appointment of another

planning commissioner to the board of adjustment. After September 9, 1995, the first vacancy occurring on the board of adjustment shall be filled by the appointment of a person who resides in the extraterritorial zoning jurisdiction of the city or village at such time as more than two hundred persons reside within such area. Thereafter, at all times, at least one member of the board of adjustment shall reside outside of the corporate boundaries of the city or village but within its extraterritorial zoning jurisdiction. The board of adjustment shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to sections 19-901 to 19-914. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. Such chairperson, or in his or her absence the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

Source: Laws 1927, c. 43, § 7, p. 184; C.S.1929, § 19-907; R.S.1943, § 19-908; Laws 1967, c. 92, § 5, p. 285; Laws 1975, LB 410, § 17; Laws 1995, LB 805, § 1.

Procedural rules detailed in statutes and city zoning ordinance need not be further adopted by a board of adjustment. South Maple Street Assn. v. Board of Adjustment of City of Chadron, 194 Neb. 118, 230 N.W.2d 471 (1975).

19-909 Board of adjustment; appeals to board; record on appeal; hearing; stays.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

Source: Laws 1927, c. 43, § 7, p. 185; C.S.1929, § 19-907.

Procedural rules detailed in statutes and city zoning ordinance need not be further adopted by a board of adjustment. South Maple Street Assn. v. Board of Adjustment of City of Chadron, 194 Neb. 118, 230 N.W.2d 471 (1975).

19-910 Board of adjustment; powers; jurisdiction on appeal; variance; when permitted.

(1) The board of adjustment shall, subject to such appropriate conditions and safeguards as may be established by the legislative body, have only the follow-

ing powers: (a) To hear and decide appeals when it is alleged there is error in any order, requirement, decision, or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures, except that the authority to hear and decide appeals shall not apply to decisions made under subsection (3) of section 19-929; (b) to hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of any map; and (c) when by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under this section and sections 19-901, 19-903 to 19-904.01, and 19-908 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any ordinance or resolution.

(2) No such variance shall be authorized by the board unless it finds that: (a) The strict application of the zoning regulation would produce undue hardship; (b) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; (c) the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and (d) the granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice. No variance shall be authorized unless the board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

(3) In exercising the powers granted in this section, the board may, in conformity with sections 19-901 to 19-915, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variation in such regulation.

Source: Laws 1927, c. 43, § 7, p. 185; C.S.1929, § 19-907; R.S.1943, § 19-910; Laws 1967, c. 92, § 6, p. 286; Laws 1969, c. 114, § 1, p. 526; Laws 1975, LB 410, § 18; Laws 1978, LB 186, § 6; Laws 2004, LB 973, § 1.

Cross References

For other zoning boards acting as a zoning board of adjustment for a municipality, see section 19-912.01.

Due to the similarity between section 14-411 and this section when Frank v. Russell, 160 Neb. 354, 70 N.W.2d 306 (1955), was decided, Frank is applicable to decisions rendered under

both statutes. Eastroads, L.L.C. v. Omaha Zoning Bd. of Appeals, 261 Neb. 969, 628 N.W.2d 677 (2001).

The district court's granting of a zoning variance was not erroneous where the strict application of the subject zoning regulation would, because of the higher elevation of the movant's property, result in undue hardship, which is not of the type generally shared by other properties in the same zoning district and vicinity. Furthermore, the variance sought would not create a substantial detriment to the adjacent property, the character of the district would not be changed, and the variance would not produce a substantial detriment to the public good or substantially impair the intent of the zoning regulation. Barrett v. City of Bellevue, 242 Neb. 548, 495 N.W.2d 646 (1993).

Procedural rules detailed in statutes and city zoning ordinance need not be further adopted by a board of adjustment. South Maple Street Assn. v. Board of Adjustment of City of Chadron, 194 Neb. 118, 230 N.W.2d 471 (1975).

Variance from zoning ordinance requires concurring vote of four members of board of zoning adjustment. City of Imperial v. Raile, 187 Neb. 404, 191 N.W.2d 442 (1971).

Request for rezoning may be presented to board of adjustment. Weber v. City of Grand Island, 165 Neb. 827, 87 N.W.2d 575 (1958).

A variance should be granted only if strict application of the regulation, due to the unusual characteristics of the property existing at the time of the enactment of the regulation, would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner. Any grant of a variance must be supported by evidence relating to each of the four factors enumerated in this section. City of Battle Creek v. Madison Cty. Bd. of Adjust., 9 Neb. App. 223, 609 N.W.2d 706 (2000).

19-911 Board of adjustment; legislative body of village may act; exception; powers and duties.

Notwithstanding the provisions of sections 19-907 and 19-908, the legislative body of a village may, except as set forth in section 19-912.01, provide by ordinance that it shall constitute a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of sections 19-901 to 19-905 may provide that as such board of adjustment it may exercise only the powers granted to boards of adjustment by section 19-910. As such board of adjustment it shall adopt rules and procedures that are in harmony with sections 19-907 to 19-910, and shall have the powers and duties therein provided for the board of adjustment, and other parties shall have all the rights and privileges therein provided for. The concurring vote of two-thirds of the members of the legislative body acting as a board of adjustment shall decide any question upon which it is required to pass as such board.

Source: Laws 1927, c. 43, § 8, p. 186; C.S.1929, § 19-908; R.S.1943, § 19-911; Laws 1975, LB 410, § 19; Laws 1978, LB 186, § 7; Laws 1998, LB 901, § 2.

The city council of a first-class city is not authorized by this section to sit as a board of adjustment. Staley v. City of Blair, 206 Neb. 292, 292 N.W.2d 570 (1980).

City council may sit as a board of adjustment. Weber v. City of Grand Island, 165 Neb. 827, 87 N.W.2d 575 (1958).

19-912 Board of adjustment; appeal; procedure.

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to the district court a petition duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of such illegality. Such petition must be presented to the court within fifteen days after the filing of the decision in the office of the board. Upon the filing of such petition a summons shall be issued and be served upon the board of adjustment, together with a copy of the petition. Return of service shall be made within four days after the issuance of the summons. Within ten days after the return day of such summons, the board of adjustment shall file an answer to said petition which shall admit or deny the substantial averments of the petition, and shall state the contentions of the board with reference to the matters in dispute as disclosed by the petition. The answer shall be verified in like manner as required for the petition. At the expiration of the time for filing answer, the court shall proceed to hear and determine the cause without delay and shall render judgment thereon according to the forms of law. If, upon the hearing, it shall appear to the court that testimony is

necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. Said appeal to the district court shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order. Any appeal from such judgment of the district court shall be prosecuted in accordance with the general laws of the state regulating appeals in actions at law.

Source: Laws 1927, c. 43, § 9, p. 186; C.S.1929, § 19-909; R.S.1943, § 19-912; Laws 1963, c. 89, § 3, p. 301.

There is nothing in this section which requires one to either seek and obtain a restraining order or forgo any challenge to a variance. On the contrary, this section merely provides that a challenger who wishes to incur the cost of obtaining a restraining order may do so in order to temporarily protect himself from the consequences of the variance during the pendency of the appeal. Bowman v. City of York, 240 Neb. 201, 482 N.W.2d 537 (1992).

Appeal allows a full review of both law and facts. City of Imperial v. Raile, 187 Neb. 404, 191 N.W.2d 442 (1971).

Appeal may be taken from order of board of adjustment permitting rezoning. Weber v. City of Grand Island, 165 Neb. 827, 87 N.W.2d 575 (1958).

An appeal to the courts from decision of city council is authorized. Kelley v. John, 162 Neb. 319, 75 N.W.2d 713 (1956).

Provision for appeal contemplates a review of facts as well as law. Frank v. Russell, 160 Neb. 354, 70 N.W.2d 306 (1955).

A city council, under a zoning ordinance, cannot restrict the use of property in an unreasonable or arbitrary manner. Coulthard v. Board of Adjustment of City of Neligh, 130 Neb. 543, 265 N.W. 530 (1936).

19-912.01 Zoning board of adjustment of a county; serve municipalities, when; board of zoning appeals.

The zoning board of adjustment of a county that has adopted a comprehensive development plan, as defined by section 23-114.02, and is enforcing zoning regulations based upon such a plan, shall, upon request of the governing body of a village or second-class city, serve as the zoning board of adjustment for such village or city of the second class in that county. A city of the first class may request that the county zoning board of adjustment of the county in which it is located serve as that city's zoning board of adjustment, and such county government shall comply with that request within ninety days. A municipality located in more than one county shall be served by request or otherwise only by the county zoning board of adjustment of the county in which the greatest area of the municipality is located, and the jurisdiction of such county zoning board of adjustment shall include all portions of the municipality and its area of extraterritorial control, regardless of county lines. In a county where there is a city of the primary class, the board of zoning appeals, created under section 23-174.09, may serve in the same capacity for all cities of the second class and villages in place of a zoning board of adjustment.

Source: Laws 1975, LB 317, § 5; Laws 1981, LB 298, § 4; R.S.1943, (1994), § 84-155; Laws 1998, LB 901, § 3.

Cross References

For provisions relating to boards of adjustment for cities of the first and second class and villages, see sections 19-907 to 19-912.

19-913 Zoning laws and regulations; enforcement; violations; penalties; actions.

The local legislative body may provide by ordinance for the enforcement of sections 19-901 to 19-915, and of any ordinance, regulation, or restriction made

thereunder. A violation of such sections or of such ordinance or regulation is hereby declared to be a misdemeanor, and such local legislative body may provide for the punishment thereof by fine of not exceeding one hundred dollars for any one offense, recoverable with costs, or by imprisonment in the county jail for a term not to exceed thirty days. Each day such violation continues after notice of violation is given to the offender may be considered a separate offense. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of said sections or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

Source: Laws 1927, c. 43, § 10, p. 187; C.S.1929, § 19-910; R.S.1943, § 19-913; Laws 1975, LB 410, § 20.

Injunction authorized in addition to other remedies for violation of zoning laws. City of Imperial v. Raile, 187 Neb. 404, 191 N.W.2d 442 (1971).

City may maintain action for mandatory injunction to compel removal of structure erected in violation of zoning ordinance. City of Beatrice v. Williams, 172 Neb. 889, 112 N.W.2d 16 (1961).

19-914 Zoning regulations; conflict with other laws; effect.

Whenever the regulations made under authority of sections 19-901 to 19-905 require a greater width or size of yards, courts or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute, local ordinance or regulation, the provisions of the regulations made under authority of said sections shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of said sections, the provisions of such statute, local ordinance or regulation shall govern.

Source: Laws 1927, c. 43, § 11, p. 188; C.S.1929, § 19-911.

19-915 Zoning regulations; changes; procedure; ratification.

(1) When any city of the first or second class or any village has enacted zoning regulations in accordance with statutory authority and as a part of such regulations has bounded and defined the various zoning or building districts with reference to a zoning map such zoning or building districts may from time to time, be changed, modified or terminated, or additional or different zoning or building districts may from time to time be created, changed, modified or terminated, by an appropriate amendatory action which describes the changed, modified, terminated or created zone or district or part thereof by legal description or metes and bounds, or by republishing a part only of the original zoning map, and without republishing the original zoning map as a part of the amendatory action and without setting forth and repealing the entire section or ordinance adopting the rezoning maps, or a part of the zoning map, as a part of

the amendatory action, notwithstanding the provisions of section 16-404 or 17-614.

(2) When any city of the first or second class or any village has, prior to March 21, 1969, changed the boundaries of a zoning or building district without compliance with section 16-404 or 17-614, any such amendments of the zoning ordinances shall stand as valid and subsisting amendments until repealed and the action of any such city or village in executing any such amendment is expressly ratified by the Legislature.

Source: Laws 1969, c. 108, § 1, p. 509; Laws 1975, LB 410, § 21.

19-916 Additions; platting; procedure; rights and privileges of inhabitants; powers of legislative body; approval required; effect.

(1) The proprietor or proprietors of any land within the corporate limits of any city of the first or second class or village, or of any land within the area designated by a city of the first class pursuant to subsection (1) of section 16-902 or within the area designated by a city of the second class or village pursuant to subsection (1) of section 17-1002, may lay out such land into lots, blocks, streets, avenues, alleys, and other grounds under the name of ..... Addition to the City or Village of ....., and shall cause an accurate map or plat thereof to be made out, designating explicitly the land so laid out and particularly describing the lots, blocks, streets, avenues, alleys, and other grounds belonging to such addition. The lots shall be designated by numbers, and streets, avenues, and other grounds, by names or numbers. Such plat shall be acknowledged before some officer authorized to take the acknowledgments of deeds, and shall contain a dedication of the streets, alleys, and public grounds therein to the use and benefit of the public, and have appended a survey made by some competent surveyor with a certificate attached, certifying that he or she has accurately surveyed such addition and that the lots, blocks, streets, avenues, alleys, parks, commons, and other grounds are well and accurately staked off and marked. When such map or plat is so made out, acknowledged, and certified, and has been approved by the local legislative body, the same shall be filed and recorded in the office of the register of deeds and county assessor of the county.

(2) The legislative body may designate by ordinance an employee of such city or village to approve further subdivision of existing lots and blocks whenever all required public improvements have been installed, no new dedication of public rights-of-way or easements is involved, and such subdivision complies with the ordinance requirements concerning minimum areas and dimensions of such lots and blocks.

(3) Upon approval by the legislative body or its designated agent, such plat shall be equivalent to a deed in fee simple absolute to the municipality from the proprietor of all streets, avenues, alleys, public squares, parks and commons, and of such portion of the land as is therein set apart for public and municipal use, or is dedicated to charitable, religious, or educational purposes.

All additions thus laid out and previously located within the corporate boundaries of the municipality shall remain a part of the municipality.

(4) All additions laid out adjoining or contiguous to the corporate limits may be included within the corporate limits and become a part of such municipality for all purposes whatsoever at such time as the addition is approved if (a) after giving notice of the time and place of the hearing as provided in section 19-904,

the planning commission and the legislative body both hold public hearings on the inclusion of the addition within the corporate limits. Such hearings shall be separate from the public hearings held regarding approval of the addition and (b) the legislative body votes to approve the inclusion of the addition within the corporate boundaries of the municipality in a separate vote from the vote approving the addition. If the legislative body includes the addition within the corporate limits, the inhabitants of such addition shall be entitled to all the rights and privileges, and shall be subject to all the laws, ordinances, rules, and regulations of the municipality to which such land is an addition.

(5) The local legislative body shall have power by ordinance to provide the manner, plan, or method by which land within the corporate limits of any such municipality, or land within the area designated by a city of the first class pursuant to subsection (1) of section 16-902 or within the area designated by a city of the second class or village pursuant to subsection (1) of section 17-1002, may be subdivided, platted, or laid out, including a plan or system for the avenues, streets, or alleys to be laid out within or across the same, and to compel the owners of any such land in subdividing, platting, or laying out the same to conform to the requirements of the ordinance and to lay out and dedicate the avenues, streets, and alleys in accordance therewith. No addition shall have any validity, right, or privileges as an addition, and no plat of land or, in the absence of a plat, no instrument subdividing land within the corporate limits of any such municipality or of any land within the area designated by a city of the first class pursuant to subsection (1) of section 16-902 or within the area designated by a city of the second class or village pursuant to subsection (1) of section 17-1002, shall be recorded or have any force or effect, unless the same be approved by the legislative body, or its designated agent, and its or his or her approval endorsed thereon.

Source: Laws 1901, c. 18, § 6, p. 228; R.S.1913, § 4811; C.S.1922, § 3979; C.S.1929, § 16-108; R.S.1943, § 16-112; Laws 1967, c. 66, § 1, p. 215; Laws 1974, LB 757, § 3; R.R.S.1943, § 16-112; Laws 1975, LB 410, § 2; Laws 1983, LB 71, § 10; Laws 2001, LB 210, § 1.

Annexation by city council resolution in compliance with a subdivision ordinance adopted by the city under section 19-916 constitutes a declaration of boundaries of the city by ordinance within the meaning of former section 79-801. The effective date of the city annexation ordinance is the date of the city council resolution of approval. Northwest High School Dist. No. 82 of Hall & Merrick Counties v. Hessel, 210 Neb. 219, 313 N.W.2d 656 (1981).

One of two methods of annexing territory to a city of the first class is provided by this section. State ex rel. City of Grand Island v. Tillman, 174 Neb. 23, 115 N.W.2d 796 (1962).

19-917 Additions; vacating; powers; procedure; costs.

Power is hereby given to such municipality through its governing body by proper ordinance therefor duly enacted to vacate any such existing plat and addition to the municipality or such part or parts thereof as such municipality may deem advantageous and best for its interests, and the power hereby granted shall be exercised by such municipality upon the petition of the owner or all the owners of lots or lands in such plat or addition. Such ordinance vacating such plat or addition shall specify whether, and, if any, what public highways, streets, alleys, and public grounds thereof are to be retained by such municipality; otherwise such ways, streets, and public grounds shall upon such vacation revert to the owner or owners of lots or lands abutting the same in proportion to the respective ownerships of such lots or grounds. In case of total or partial vacation of such plat or addition, the ordinance providing therefor

shall be, at the cost of the owner or owners, certified to the office of the register of deeds and be there recorded by the owner or owners. Whereupon said officer shall note such total or partial vacation of such plat or addition by writing in plain and legible letters upon such plat or portion thereof so vacated the word vacated, and also make on the same reference to the volume and page in which said ordinance of vacation is recorded; and the owner or owners of the lots and lands in a plat so vacated shall cause the same and the proportionate part of the abutting highway, streets, alleys and public grounds so vacated to be replatted and numbered by the city or county surveyor. When such replat so executed is acknowledged by such owner or owners and is recorded in the office of the register of deeds of such county such property so replatted may be conveyed and assessed by the numbers given in such replat.

Source: Laws 1901, c. 18, § 6, p. 228; R.S.1913, § 4812; C.S.1922, § 3980; C.S.1929, § 16-109; R.S.1943, § 16-113; Laws 1975, LB 410, § 3.

This section is applicable to quiet title of owner of adjoining lots when nominal street of platted addition vacated. Trahan v. Council Bluffs Steel Erection Co., 183 Neb. 170, 159 N.W.2d 207 (1968).

19-918 Additions; subdivision; plat of streets; duty of owner to obtain approval.

No owner of real estate within the corporate limits of such municipality shall be permitted to subdivide, plat, or lay out said real estate into blocks, lots, streets, or other portions of the same intended to be dedicated for public use, or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto, without first having obtained the approval thereof of the governing body of such municipality or its agent designated pursuant to section 19-916. Any and all additions to be made to the municipality shall be made, so far as the same relate to the avenues, streets, and alleys therein, under and in accordance with the provisions of sections 19-916 to 19-918.

Source: Laws 1901, c. 18, § 51, p. 269; R.S.1913, § 4813; C.S.1922, § 3981; C.S.1929, § 16-110; R.S.1943, § 16-114; Laws 1967, c. 66, § 2, p. 217; R.R.S.1943, § 16-114; Laws 1975, LB 410, § 4; Laws 1983, LB 71, § 11.

The subdivision into lots and the filing of a plat, by the owner of lands adjacent to and outside the city limits, without the city's affirmative change of its boundaries, does not place such land within the city limits, even though city taxes are levied against it, and a court will enjoin such taxes in a collateral attack. Hemple v. City of Hastings, 79 Neb. 723, 113 N.W. 187 (1907).

19-919 Additions; subdivisions; plat; governing body; approve before recording; powers.

No plat of or instruments effecting the subdivision of real property described in section 19-918 shall be recorded or have any force and effect unless the same be approved by the governing body of such municipality or its agent designated pursuant to section 19-916. The governing body of such municipality shall have power, by ordinance, to provide the manner, plan, or method by which real property in any such area may be subdivided, platted, or laid out, including a plan or system for the avenues, streets, or alleys to be laid out within or across the same; and to prohibit the sale or offering for sale of, and the construction of buildings and other improvements on, any lots or parts of real property not subdivided, platted, or laid out as required in sections 19-918 and 19-920.

Source: Laws 1967, c. 66, § 3, p. 217; R.R.S.1943, § 16-114.01; Laws 1975, LB 410, § 5; Laws 1983, LB 71, § 12.

19-920 Additions; subdivisions; conform to ordinances; streets and alleys; requirements.

The governing body shall have power to compel the owner of any real property described in section 19-918 in subdividing, platting, or laying out the same to conform to the requirements of the ordinance and to lay out and dedicate the avenues, streets, and alleys in accordance therewith.

Source: Laws 1967, c. 66, § 4, p. 217; R.R.S.1943, § 16-114.02; Laws 1975, LB 410, § 6.

19-921 Subdivision, defined; where applicable.

For the purposes of sections 16-901 to 16-905 and 19-916 to 19-920, in the area where the municipality has a comprehensive plan and has adopted subdivision regulations pursuant thereto, subdivision shall mean the division of lot, tract, or parcel of land into two or more lots, sites, or other divisions of land for the purpose, whether immediate or future, of ownership or building development, except that the division of land shall not be considered to be a subdivision when the smallest parcel created is more than ten acres in area.

Source: Laws 1973, LB 241, § 2; R.R.S.1943, § 16-114.03; Laws 1975, LB 410, § 7; Laws 1993, LB 208, § 5.

19-922 Legislative body of municipality; adopt building regulations; publish; reference to existing codes; ordinances open to public; ordinances to apply to entire municipal area.

The legislative body of any first- or second-class city or any village may adopt by ordinance, which shall have the force and effect of law, the conditions, provisions, limitations, and terms of a building code, a plumbing code, an electrical code, a fire prevention code, or any other code relating to building or relating to the erection, construction, reconstruction, alteration, repair, conversion, maintenance, placing, or using of any building, structure, automobile trailer, house trailer, or cabin trailer. The local legislative body shall, before such ordinance takes effect, cause such ordinance setting forth the code to be published one time in book or pamphlet form or in a legal newspaper published in and of general circulation in the municipality or, if none is published in the municipality, in a legal newspaper of general circulation in the municipality. The legislative body may by ordinance, which shall have the force and effect of law, amend such code so adopted. For this purpose, the local legislative body may adopt any standard code which contains rules or regulations printed as a code in book or pamphlet form, by reference to such code, or portions thereof, alone without setting forth in such ordinance the conditions, provisions, limitations, or terms of such code. When such code or any such standard code, or portion thereof, shall be incorporated by reference into any ordinance pursuant to this section, it shall have the same force and effect as though it has been spread at large in such ordinance without further or additional publication. At least one copy of such code or such standard code, or portion thereof, shall be filed for use and examination by the public in the office of the clerk of such municipality prior to its adoption. The adoption of any such standard code by reference shall be construed to incorporate such amendments as may be made from time to time if one copy of such standard code so filed shall be at all times kept current in the office of the clerk of the municipality. Any code adopted and approved by the local legislative body as provided in this section and the

building permit requirements or occupancy permit requirements imposed by any such code or by section 19-913 shall apply to all of the city or village and within the unincorporated area where a city or village has been granted zoning jurisdiction and is exercising such jurisdiction.

Source: Laws 1975, LB 410, § 8; Laws 1986, LB 960, § 12; Laws 1987, LB 483, § 1.

19-923 Municipality; notify board of education; when.

In order to provide for orderly school planning and development, a municipality considering the adoption or amendment of a zoning ordinance, or approval of the platting or replatting of any development of real estate, shall notify the board of education of each school district in which the real estate, or some part thereof, to be affected by such a proposal lies, of the next regular meeting of the planning commission at which such proposal is to be considered and shall submit a copy of the proposal to the board of education at least ten days prior to such meeting. The provisions of this section shall not apply to zoning, rezoning, or approval of plats by any city of the metropolitan or primary class, which has adopted a comprehensive subdivision ordinance pursuant to sections 14-115 and 14-116, or Chapter 15, articles 9 and 11. Plats of subdivisions approved by the agent of a municipality designated pursuant to section 19-916 shall not be subject to the notice requirement in this section.

Source: Laws 1963, c. 463, § 1, p. 1491; Laws 1969, c. 722, § 1, p. 2752; R.S.1943, (1981), § 79-4,151; Laws 1983, LB 71, § 14.

19-924 Municipal planning; terms, defined.

For purposes of sections 19-924 to 19-933:

(1) Municipality or municipal shall mean or relate to cities of the first and second classes and villages;

(2) Mayor shall mean the chief executive of the municipality, whether the official designation of the office is mayor, chairperson, city manager, or otherwise; and

(3) Council shall mean the chief legislative body of the municipality.

Source: Laws 1937, c. 39, § 1, p. 176; C.S.Supp.,1941, § 18-2101; R.S. 1943, § 18-1301; Laws 1967, c. 85, § 1, p. 269; R.S.1943, (1983), § 18-1301; Laws 1993, LB 207, § 1.

Zoning for counties and municipalities are governed by different statutes, and the provisions to eliminate overlapping refer to municipalities only. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

City of first class has authority to carry out municipal planning. City of Grand Island v. Ehlers, 180 Neb. 331, 142 N.W.2d 770 (1966).

19-925 Municipal plan; planning commission; authorized.

Any municipality is hereby authorized and empowered to make, adopt, amend, extend, and carry out a municipal plan as provided in sections 19-924 to 19-933 and to create by ordinance a planning commission with the powers and duties set forth in such sections. The planning commission of a city shall be designated city planning commission or city plan commission, and the planning commission of a village shall be designated the village planning commission or village plan commission.

Source: Laws 1937, c. 39, § 2, p. 176; C.S.Supp.,1941, § 18-2102; R.S. 1943, (1983), § 18-1302; Laws 1993, LB 207, § 2.

19-926 Planning commission; members; term; removal; vacancies; alternate members.

(1) The planning commission shall consist of nine regular members who shall represent, insofar as is possible, the different professions or occupations in the municipality and shall be appointed by the mayor, by and with the approval of a majority vote of the members elected to the council or the village board. Two of the regular members may be residents of the area over which the municipality is authorized to exercise extraterritorial zoning and subdivision regulation. When there is a sufficient number of residents in the area over which the municipality exercises extraterritorial zoning and subdivision regulation, one regular member of the commission shall be a resident from such area. If it is determined by the city council or village board that a sufficient number of residents reside in the area subject to extraterritorial zoning or subdivision regulation, and no such resident is a regular member of the commission, the first available vacancy on the commission shall be filled by the appointment of such an individual. For purposes of this section, a sufficient number of residents shall mean: (a) For a village, two hundred residents; (b) for a city of the second class, five hundred residents; and (c) for a city of the first class, one thousand residents. A number of commissioners equal to a majority of the number of regular members appointed to the commission shall constitute a quorum for the transaction of any business. All regular members of the commission shall serve without compensation and shall hold no other municipal office except when appointed to serve on the board of adjustment as provided in section 19-908. The term of each regular member shall be three years, except that three regular members of the first commission to be so appointed shall serve for terms of one year, three for terms of two years, and three for terms of three years. All regular members shall hold office until their successors are appointed. Any member may, after a public hearing before the council or village board, be removed by the mayor with the consent of a majority vote of the members elected to the council or village board for inefficiency, neglect of duty or malfeasance in office, or other good and sufficient cause. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired portion of the term by the mayor.

(2) Notwithstanding the provisions of subsection (1) of this section, the planning commission for any city of the second class or village may have either five, seven, or nine regular members as the city council or village board of trustees establishes by ordinance. If a city or village planning commission has either five or seven regular members, approximately one-third of the regular members of the first commission shall serve for terms of one year, one-third for terms of two years, and one-third for terms of three years.

(3) A city of the first or second class or a village may, by ordinance, provide for the appointment of one alternate member to the planning commission who shall be chosen by the mayor with the approval of a majority vote of the elected members of the council or village board. The alternate member shall serve without compensation and shall hold no other municipal office. The term of the alternate member shall be three years, and he or she shall hold office until his or her successor is appointed and approved. The alternate member may be removed from office in the same manner as a regular member. If the alternate member position becomes vacant other than through the expiration of the term, the vacancy shall be filled for the unexpired portion of the term by the mayor with the approval of a majority vote of the elected members of the council or

village board. The alternate member may attend any meeting and may serve as a voting and participating member of the commission at any time when less than the full number of regular commission members is present and capable of voting.

Source: Laws 1937, c. 39, § 3, p. 176; C.S.Supp.,1941, § 18-2103; R.S. 1943, § 18-1303; Laws 1975, LB 410, § 9; Laws 1978, LB 186, § 3; R.S.1943, (1983), § 18-1303; Laws 1988, LB 934, § 6; Laws 1995, LB 193, § 1.

19-927 Planning commission; organization; meetings; rules and regulations; records.

The commission shall elect its chairperson from its members and create and fill such other of its offices as it may determine. The term of the chairperson shall be one year, and he or she shall be eligible for reelection. The commission shall hold at least one regular meeting in each calendar quarter, except the municipal governing body may require the commission to meet more frequently and the chairperson of the commission may call for a meeting when necessary to deal with business pending before the commission. The commission shall adopt rules and regulations for the transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, which shall be a public record.

Source: Laws 1937, c. 39, § 4, p. 177; C.S.Supp.,1941, § 18-2104; R.S. 1943, (1983), § 18-1304; Laws 1997, LB 426, § 1.

19-928 Planning commission; funds, equipment and accommodations; limit upon expenditures.

The council may provide the funds, equipment and accommodations necessary for the work of the commission, but the expenditures of the commission, exclusive of gifts, shall be within the amounts appropriated for that purpose by the council; and no expenditures nor agreements for expenditures shall be valid in excess of such amounts.

Source: Laws 1937, c. 39, § 5, p. 177; C.S.Supp.,1941, § 18-2105.

19-929 Planning commission; municipal governing body; powers and duties; appeal.

(1) Except as provided in sections 19-930 to 19-933, the planning commission shall (a) make and adopt plans for the physical development of the municipality, including any areas outside its boundaries which in the commission's judgment bear relation to the planning of such municipality and including a comprehensive development plan as defined by section 19-903, (b) prepare and adopt such implemental means as a capital improvement program, subdivision regulations, building codes, and a zoning ordinance in cooperation with other interested municipal departments, and (c) consult with and advise public officials and agencies, public utilities, civic organizations, educational institutions, and citizens with relation to the promulgation and implementation of the comprehensive development plan and its implemental programs. The commission may delegate authority to any such group to conduct studies and make surveys for the commission, make preliminary reports on its findings, and hold public hearings before submitting its final reports. The municipal governing body shall not take final action on matters relating to the comprehensive

development plan, capital improvements, building codes, subdivision development, the annexation of territory, or zoning until it has received the recommendation of the planning commission if such commission in fact has been created and is existent. The governing body shall by ordinance set a reasonable time within which the recommendation from the planning commission is to be received. A recommendation from the planning commission shall not be required for subdivision of existing lots and blocks whenever all required public improvements have been installed, no new dedication of public rights-of-way or easements is involved, and such subdivision complies with the ordinance requirements concerning minimum areas and dimensions of such lots and blocks, if the governing body has designated, by ordinance, an agent pursuant to section 19-916.

(2) The commission may, with the consent of the governing body, in its own name (a) make and enter into contracts with public or private bodies, (b) receive contributions, bequests, gifts, or grant funds from public or private sources, (c) expend the funds appropriated to it by the municipality, (d) employ agents and employees, and (e) acquire, hold, and dispose of property.

The commission may on its own authority make arrangements consistent with its program, conduct or sponsor special studies or planning work for any public body or appropriate agency, receive grants, remuneration, or reimbursement for such studies or work, and at its public hearings, summon witnesses, administer oaths, and compel the giving of testimony.

(3) The commission may grant conditional uses or special exceptions to property owners for the use of their property if the municipal governing body has, through a zoning ordinance or special ordinance, generally authorized the commission to exercise such powers and has approved the standards and procedures adopted by the commission for equitably and judiciously granting such conditional uses or special exceptions. The granting of a conditional use permit or special exception shall only allow property owners to put their property to a special use if it is among those uses specifically identified in the zoning ordinance as classifications of uses which may require special conditions or requirements to be met by the owners before a use permit or building permit is authorized. The power to grant conditional uses or special exceptions shall be the exclusive authority of the commission, except that the municipal governing body may choose to retain for itself the power to grant conditional uses or special exceptions for those classifications of uses specified in the zoning ordinance. The municipal governing body may exercise such power if it has formally adopted standards and procedures for granting such conditional uses or special exceptions in a manner that is equitable and will promote the public interest. An appeal of a decision by the commission or municipal governing body regarding a conditional use or special exception shall be made to the district court.

Source: Laws 1937, c. 39, § 6, p. 177; C.S.Supp.,1941, § 18-2106; R.S. 1943, § 18-1306; Laws 1967, c. 85, § 2, p. 269; Laws 1978, LB 186, § 4; Laws 1983, LB 71, § 6; R.S.1943, (1983), § 18-1306; Laws 1993, LB 207, § 3; Laws 1993, LB 209, § 1; Laws 1994, LB 630, § 5; Laws 2004, LB 973, § 2.

A city of the first class is not required to obtain a recommendation from the planning commission before proceeding with annexation. City of Parkview v. City of Grand Island, 188 Neb. 267, 196 N.W.2d 197 (1972).

19-930 Interjurisdictional planning commission; assume powers and duties of planning commission; when.

(1) For any matter within the jurisdiction of a municipality's planning commission relating to that portion of the municipality's zoning jurisdiction as defined in section 16-901 or 17-1001 outside the corporate limits of the municipality which is within a county other than the county in which the municipality is located, the powers, duties, responsibilities, and functions of the planning commission of the municipality with regard to such matter shall be assumed by the municipality's interjurisdictional planning commission established under section 19-931 when the formation of such a commission is requested by either the municipality or the county within which the municipality is not located as provided in subsection (2) of this section.

(2) Any municipality exercising zoning jurisdiction as defined in section 16-901 or 17-1001 outside its corporate limits but within a county other than the county within which the municipality is located or the county within which such municipality is exercising such zoning jurisdiction may, by formal resolution of a majority of the voting members of its governing body, request the formation of an interjurisdictional planning commission to exercise the jurisdiction granted by sections 19-930 to 19-933. Such resolution shall be transmitted to the appropriate municipality or county and its receipt formally acknowledged.

Source: Laws 1993, LB 207, § 4.

19-931 Interjurisdictional planning commission; members; term; vacancies.

The interjurisdictional planning commission of a municipality shall consist of six members. Three members shall be chosen by the mayor of the municipality with the approval of the council from the membership of the municipality's planning commission. Three members shall be chosen by the county board of the county within which the municipality exercises zoning jurisdiction under the circumstances specified in section 19-930. The three members chosen by the county board shall be members of the county planning commission as described in section 23-114.01. Members of the interjurisdictional planning commission shall serve without compensation and without reimbursement for expenses incurred pursuant to carrying out sections 19-930 to 19-933 for terms of one year. Members shall hold office until their successors are appointed and qualified. Vacancies shall be filled by appointment by the body which appointed the member creating the vacancy.

Source: Laws 1993, LB 207, § 5.

19-932 Interjurisdictional planning commission; creation; elimination.

A municipality exercising zoning jurisdiction under the circumstances set out in section 19-930 shall create an interjurisdictional planning commission by ordinance within sixty days after the formal passage of a resolution pursuant to subsection (2) of section 19-930. All matters filed with the municipality within ninety days after such date which are properly within the jurisdiction of the interjurisdictional planning commission shall, after the effective date of the ordinance, be referred to such commission until such time as both the municipality and the county agree by majority vote of each governing body to eliminate the interjurisdictional planning commission and transfer its jurisdiction to the planning commission of the municipality.

Source: Laws 1993, LB 207, § 6.

19-933 Sections; applicability.

The provisions of sections 19-930 to 19-932 shall not apply in a county within which the interjurisdictional planning commission would exercise jurisdiction if such county does not exercise the authority granted by section 23-114.

Source: Laws 1993, LB 207, § 7.

ARTICLE 10

HOUSING AUTHORITIES

Section

19-1001 Repealed. Laws 1969, c. 552, § 40.

19-1002 Repealed. Laws 1969, c. 552, § 40.

19-1003 Repealed. Laws 1969, c. 552, § 40.

19-1003.01 Repealed. Laws 1969, c. 552, § 40.

19-1004 Repealed. Laws 1969, c. 552, § 40.

19-1005 Repealed. Laws 1969, c. 552, § 40.

19-1006 Repealed. Laws 1969, c. 552, § 40.

19-1007 Repealed. Laws 1969, c. 552, § 40.

19-1008 Repealed. Laws 1969, c. 552, § 40.

19-1009 Repealed. Laws 1969, c. 552, § 40.

19-1009.01 Repealed. Laws 1969, c. 552, § 40.

19-1010 Repealed. Laws 1969, c. 552, § 40.

19-1011 Repealed. Laws 1969, c. 552, § 40.

19-1012 Repealed. Laws 1969, c. 552, § 40.

19-1013 Repealed. Laws 1969, c. 552, § 40.

19-1014 Repealed. Laws 1969, c. 552, § 40.

19-1015 Repealed. Laws 1969, c. 552, § 40.

19-1016 Repealed. Laws 1969, c. 552, § 40.

19-1017 Repealed. Laws 1969, c. 552, § 40.

19-1018 Repealed. Laws 1969, c. 552, § 40.

19-1019 Repealed. Laws 1969, c. 552, § 40.

19-1020 Repealed. Laws 1969, c. 552, § 40.

19-1021 Repealed. Laws 1969, c. 552, § 40.

19-1022 Repealed. Laws 1969, c. 552, § 40.

19-1023 Repealed. Laws 1969, c. 552, § 40.

19-1024 Repealed. Laws 1969, c. 552, § 40.

19-1025 Repealed. Laws 1969, c. 552, § 40.

ARTICLE 11

TREASURER'S REPORT AND COUNCIL PROCEEDINGS; PUBLICATION

Section
19-1101. City or village treasurer; report for fiscal year; publication.
19-1102. City or village clerk; proceedings of council; publication; contents.
19-1103. Reports and proceedings; how published; cost.
19-1104. Violations; penalty.

19-1101 City or village treasurer; report for fiscal year; publication.

It shall be the duty of the treasurer of each village or city having a population of not more than one hundred thousand to prepare and publish annually within sixty days following the close of its municipal fiscal year a statement of the receipts and expenditures by funds of the village or city for the preceding fiscal year. Not more than the legal rate provided for in section 33-141 shall be charged and paid for such publication.

Source: Laws 1919, c. 183, § 2, p. 410; C.S.1922, § 4377; C.S.1929, § 17-575; R.S.1943, § 19-1101; Laws 1959, c. 66, § 1, p. 292; Laws 1992, LB 415, § 2.

Cross References

City of the first class, receipts and expenditures, publication requirements, see section 16-722.

19-1102 City or village clerk; proceedings of council; publication; contents.

It shall be the duty of each village or city clerk in every village or city having a population of not more than one hundred thousand to prepare and publish the official proceedings of the village or city board, council, or commission within thirty days after any meeting of the board, council, or commission. The publication shall be in a newspaper of general circulation in the village or city, shall set forth a statement of the proceedings of the meeting, and shall also include the amount of each claim allowed, the purpose of the claim, and the name of the claimant, except that the aggregate amount of all payroll claims may be included as one item. Between July 15 and August 15 of each year, the employee job titles and the current annual, monthly, or hourly salaries corresponding to such job titles shall be published. Each job title published shall be descriptive and indicative of the duties and functions of the position. The charge for the publication shall not exceed the rates provided for in section 23-122.

Source: Laws 1919, c. 183, § 1, p. 410; C.S.1922, § 4376; C.S.1929, § 17-574; R.S.1943, § 19-1102; Laws 1975, LB 193, § 1; Laws 1992, LB 415, § 3.

19-1103 Reports and proceedings; how published; cost.

Publication under sections 19-1101 and 19-1102 shall be made in one legal newspaper of general circulation in such village or city. If no legal newspaper is published in the village or city, then such publication shall be made in one legal newspaper published or of general circulation within the county in which such village or city is located. The cost of publication shall be paid out of the general funds of such village or city.

Source: Laws 1919, c. 183, § 3, p. 410; C.S.1922, § 4378; C.S.1929, § 17-576; R.S.1943, § 19-1103; Laws 1986, LB 960, § 13.

19-1104 Violations; penalty.

Any village or city clerk, or treasurer, failing or neglecting to comply with the provisions of sections 19-1101 to 19-1103 shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined, not to exceed twenty-five dollars, and be liable, in addition to removal from office for such failure or neglect.

Source: Laws 1919, c. 183, § 4, p. 410; C.S.1922, § 4379; C.S.1929, § 17-577.

ARTICLE 12

PREVENTION OF NUISANCES

Section
19-1201. Repealed. Laws 1969, c. 115, § 2.

19-1201 Repealed. Laws 1969, c. 115, § 2.

ARTICLE 13

FUNDS

(Applicable to cities of the first or second class and villages.)

Section
19-1301. Sinking funds; gifts; authority to receive; real estate; management.
19-1302. Sinking funds; purposes; tax to establish; amount of levy; when authorized.

Section
19-1303. Sinking fund; resolution to establish; contents; election; laws governing.
19-1304. Sinking funds; investments authorized; limitation upon use.
19-1305. Public utilities; extension and improvements; indebtedness; pledge of revenue; combined revenue bonds.
19-1306. Public utilities; plans and specifications; notice; contents; revenue bonds, sale; procedure; subsequent issuance of revenue bonds; procedure.
19-1307. Public utilities; combined revenue bonds; objections; submit to electors; effect.
19-1308. Sections, how construed.
19-1309. Public funds; all-purpose levy; maximum limit.
19-1310. Public funds; all-purpose levy; allocation.
19-1311. Public funds; all-purpose levy; length of time effective; abandonment.
19-1312. Public funds; all-purpose levy; certification.
19-1313. Repealed. Laws 1993, LB 141, § 1.

19-1301 Sinking funds; gifts; authority to receive; real estate; management.

All cities of the first and second class, and all villages, are hereby empowered to receive money or property by donation, bequest, gift, devise or otherwise for the benefit of any one or more of the public purposes for which sinking funds are established by the provisions of sections 19-1301 to 19-1304, as stipulated by the donor. The title to the money or property so donated shall vest in the local governing bodies of said cities or villages, or in their successors in office, who shall become the owners thereof in trust to the uses of said sinking fund or funds; *Provided,* if the donation be real estate, said local governing bodies may manage the same as in the case of real estate donated to their respective municipalities for municipal library purposes under the provisions of sections 51-215 and 51-216.

Source: Laws 1939, c. 12, § 1, p. 80; C.S.Supp.,1941, § 19-1301.

19-1302 Sinking funds; purposes; tax to establish; amount of levy; when authorized.

The local governing body of any city of the first or second class or any village, subject to all the limitations set forth in sections 19-1301 to 19-1304, shall have the power to levy a tax of not to exceed ten and five-tenths cents on each one hundred dollars in any one year upon the taxable value of all the taxable property within such municipality for a term of not to exceed ten years, in addition to the amount of tax which may be annually levied for the purposes of the adopted budget statement of such municipality, for the purpose of establishing a sinking fund for the construction, purchase, improvement, extension, original equipment, or repair, not including maintenance, of any one or more of the following public improvements, including acquisition of any land incident to the making thereof: Municipal library; municipal auditorium or community house for social or recreational purposes; city or village hall; municipal public library, auditorium, or community house in a single building; municipal swimming pool and appurtenances thereto; municipal jail; municipal building to house equipment or personnel of a fire department, together with firefighting equipment or apparatus; municipal park; municipal cemetery; municipal medical clinic building, together with furnishings and equipment; or municipal hospital. No such city or village shall be authorized to levy the tax or to establish the sinking fund as provided in this section if, having bonded indebtedness, such city or village has been in default in the payment of interest thereon or principal thereof for a period of ten years prior to the date of the

passage of the resolution providing for the submission of the proposition for establishment of the sinking fund as required in section 19-1303.

Source: Laws 1939, c. 12, § 2, p. 80; C.S.Supp.,1941, § 19-1302; R.S. 1943, § 19-1302; Laws 1953, c. 287, § 35, p. 951; Laws 1961, c. 59, § 1, p. 217; Laws 1967, c. 95, § 1, p. 292; Laws 1969, c. 145, § 26, p. 669; Laws 1979, LB 187, § 80; Laws 1992, LB 719A, § 80.

This section does not apply to creating a sinking fund for payment of interest and principal of bonds. Talbott v. City of Lyons, 171 Neb. 186, 105 N.W.2d 918 (1960).

19-1303 Sinking fund; resolution to establish; contents; election; laws governing.

Before any sinking fund or funds shall be established or before any annual tax shall be levied for planned municipal improvement mentioned in section 19-1302, by any such city or village, its local governing body shall declare its purpose by resolution to submit to the qualified electors of the city or village at the next general municipal election the proposition to provide such city or village with the specific municipal improvement planned for consummation under sections 19-1301 to 19-1304. Such resolution of submission shall, among other things, set forth a clear description of the improvement planned, the estimated cost according to the prevailing costs, the amount of annual levy over a definite period of years, not exceeding ten years, required to provide such cost, and the specific name or designation for the sinking fund sought to be established to carry out the planned improvement, together with a statement of the proposition for placement upon the ballot at such election. Notice of the submission of the proposition, together with a copy of the official ballot containing the same, shall be published in its entirety three successive weeks before the day of the election in a legal newspaper published in the municipality or, if no legal newspaper is published therein, in some legal newspaper published in the county in which such city or village is located and of general circulation. If no legal newspaper is published in the county, such notice shall be published in some legal newspaper of general circulation in the county in which the municipality is located. No such sinking fund shall be established unless the same shall have been authorized by a majority or more of the legal votes of such city or village cast for or against the proposition. If less than a majority of the legal votes favor the establishment of the sinking fund, the planned improvement shall not be made, no annual tax shall be levied therefor, and no sinking fund or sinking funds shall be established in connection therewith, but such resolution of submission shall immediately be repealed. If the proposition shall carry at such election in the manner prescribed in this section, the local governing body and its successors in office shall proceed to do all things authorized under such resolution of submission but never inconsistent with sections 19-1301 to 19-1304. Provisions of the statutes of this state relating to election of officers, voting places, election apparatus and blanks, preparation and form of ballots, information to voters, delivery of ballots, conduct of elections, manner of voting, counting of votes, records and certificates of elections, and recounts of votes, so far as applicable, shall apply to voting on the proposition under this section.

Source: Laws 1939, c. 12, § 3, p. 81; C.S.Supp.,1941, § 19-1303; R.S. 1943, § 19-1303; Laws 1961, c. 59, § 2, p. 217; Laws 1986, LB 960, § 14.

This section does not apply to creating a sinking fund for payment of interest and principal of bonds. Talbott v. City of Lyons, 171 Neb. 186, 105 N.W.2d 918 (1960).

19-1304 Sinking funds; investments authorized; limitation upon use.

All funds received by municipal treasurers, by donation or by tax levy, as hereinbefore provided, shall, as they accumulate, be immediately invested by said treasurer, with the written approval of the local governing body, in the manner provided in section 77-2341. Whenever investments of said sinking fund or funds are made, as aforesaid, the nature and character of the same shall be reported to the local governing body, and said investment report shall be made a matter of record by the municipal clerk in the proceedings of such local governing body. The sinking fund, or sinking funds, accumulated under the provisions of sections 19-1301 to 19-1304, shall constitute a special fund, or funds, for the purpose or purposes for which the same was authorized and shall not be used for any other purpose unless authorized by sixty percent of the qualified electors of said municipality voting at a general election favoring such change in the use of said sinking fund or sinking funds; *Provided,* that the question of the change in the use of said sinking fund or sinking funds, when it shall fail to carry, shall not be resubmitted in substance for a period of one year from and after the date of said election.

Source: Laws 1939, c. 12, § 4, p. 82; C.S.Supp.,1941, § 19-1304.

19-1305 Public utilities; extension and improvements; indebtedness; pledge of revenue; combined revenue bonds.

Any city of the first or second class or any village in the State of Nebraska, which owns and operates public utilities consisting of a waterworks plant, water system, sanitary sewer system, gas plant, gas system, electric light and power plant or electric distribution system, may pay for extensions and improvements to any of said public utilities by issuing and selling its combined revenue bonds and securing the payment thereof by pledging and hypothecating the revenue and earnings of any two or more of said public utilities and may enter into such contracts in connection therewith as may be necessary or proper. Such combined revenue bonds shall not be general obligations of the city or village issuing the same and no taxes shall be levied for their payment but said bonds shall be a lien only upon the revenue and earnings of the public utilities owned and operated by the municipality and which are pledged for their payment.

Source: Laws 1945, c. 38, § 1, p. 191; Laws 1963, c. 92, § 1, p. 315.

19-1306 Public utilities; plans and specifications; notice; contents; revenue bonds, sale; procedure; subsequent issuance of revenue bonds; procedure.

The governing body of such city or village shall first cause plans and specifications for said proposed extensions and improvements and an estimate of the cost thereof to be made by the city or village engineer or by a special engineer employed for that purpose. Such plans, specifications and estimate of cost, after being approved and adopted by the governing body, shall be filed with the city or village clerk and be open to public inspection. The governing body shall then, by resolution entered in the minutes of their proceedings, direct that public notice be given in regard thereto. This notice shall state: (1) The general nature of the improvements or extensions proposed to be made; (2)

that the plans, specifications and estimate thereof are on file in the office of the city or village clerk and are open to public inspection; (3) the estimated cost thereof; (4) that it has proposed to pay for the same by combined revenue bonds; (5) the principal amount of said bonds which it proposes to issue; (6) the maximum rate of interest which such bonds will bear; (7) that the payment of said bonds will be a lien upon and will be secured by a pledge of the revenue and earnings of certain public utilities; (8) the names of the utilities whose revenue and earnings are to be so pledged; (9) that any qualified elector of the city or village may file written objections to the issuance of said bonds with the city or village clerk within twenty days after the first publication of said notice; (10) that if such objections are filed within said time by qualified electors of the city or village, equal in number to forty percent of the electors of the city or village who voted at the last preceding general municipal election, the bonds will not be issued unless the issuance of such bonds is otherwise authorized in accordance with law; and (11) that if such objections are not so filed by such percentage of such electors, the governing body of such city or village proposes to pass an ordinance authorizing the sale of said bonds and making such contracts with reference thereto as may be necessary or proper. Such notice shall be signed by the city or village clerk and be published three consecutive weeks in a legal newspaper published or of general circulation in such city or village. Once combined revenue bonds have been issued pursuant to this section or section 18-1101, the procedure outlined in this section shall not be required to issue additional combined revenue bonds unless an additional public utility not previously included is to be combined with the bonds contemplated to be issued.

Source: Laws 1945, c. 38, § 2, p. 192; Laws 1975, LB 446, § 2.

19-1307 Public utilities; combined revenue bonds; objections; submit to electors; effect.

If the electors of such city or village, equal in number to forty percent of the electors of said city or village voting at the last preceding general municipal election, file written objections to proposed issuance of combined revenue bonds with the city or village clerk within twenty days after the first publication of said notice, the governing body shall submit such proposition of issuing such bonds to the electors of such city or village at a special election called for that purpose or at a general city or village election, notice of which shall be given by publication in a legal newspaper published or of general circulation in such city or village three consecutive weeks. If a majority of the qualified electors of such city or village, voting upon the proposition, vote in favor of issuing such bonds, the governing body may issue and sell such combined revenue bonds and pledge, for the payment of same, the revenue and earnings of the public utilities owned and operated by the city or village, as proposed in such notice, and enter into such contracts in connection therewith as may be necessary or proper. Such bonds shall draw interest from and after the date of the issuance thereof. In the event the electors fail to approve the proposition by such majority vote, such proposition shall not be again submitted to the electors for their consideration until one year has elapsed from the date of said election.

Source: Laws 1945, c. 38, § 3, p. 193; Laws 1969, c. 51, § 72, p. 319.

19-1308 Sections, how construed.

Sections 19-1305 to 19-1308 are supplementary to existing statutes and confer upon and give to cities of the first and second class and villages powers not heretofore granted and sections 19-1305 to 19-1308 shall not be construed as repealing or amending any existing statute.

Source: Laws 1945, c. 38, § 4, p. 194.

19-1309 Public funds; all-purpose levy; maximum limit.

Notwithstanding provisions in the statutes of Nebraska to the contrary, for any fiscal year the governing body of any city of the first class, city of the second class, or village may decide to certify to the county clerk for collection one all-purpose levy required to be raised by taxation for all municipal purposes instead of certifying a schedule of levies for specific purposes added together. Subject to the limits in section 77-3442, the all-purpose levy shall not exceed an annual levy of eighty-seven and five-tenths cents on each one hundred dollars for cities of the first class and one dollar and five cents on each one hundred dollars for cities of the second class and villages upon the taxable valuation of all the taxable property in such city or village. Otherwise authorized extraordinary levies to service and pay bonded indebtedness of such municipalities may be made by such municipalities in addition to such all-purpose levy.

Source: Laws 1957, c. 47, § 1, p. 227; Laws 1959, c. 67, § 1, p. 293; Laws 1965, c. 83, § 1, p. 322; Laws 1967, c. 96, § 1, p. 293; Laws 1971, LB 845, § 1; Laws 1972, LB 1143, § 1; Laws 1979, LB 187, § 81; Laws 1992, LB 719A, § 81; Laws 1996, LB 1114, § 35.

19-1310 Public funds; all-purpose levy; allocation.

If the method provided in section 19-1309, is followed in municipal financing the municipalities shall allocate the amount so raised to the several departments of the municipality in its annual budget and appropriation ordinance, or in other legal manner, as the governing body of such municipality shall deem wisest and best.

Source: Laws 1957, c. 47, § 2, p. 227; Laws 1967, c. 96, § 2, p. 294.

19-1311 Public funds; all-purpose levy; length of time effective; abandonment.

Should any of such municipalities elect to follow the method provided in section 19-1309, it shall be bound by that election during the ensuing fiscal year but may abandon such method in succeeding fiscal years.

Source: Laws 1957, c. 47, § 3, p. 227; Laws 1967, c. 96, § 3, p. 294.

19-1312 Public funds; all-purpose levy; certification.

If it is necessary to certify the amount to county officers for collection, the same shall be certified as a single amount for general fund purposes.

Source: Laws 1957, c. 47, § 4, p. 227; Laws 1967, c. 96, § 4, p. 294.

19-1313 Repealed. Laws 1993, LB 141, § 1.

ARTICLE 14

LIGHT, HEAT, AND ICE
(Applicable to all except cities of the metropolitan class.)

Section

19-1401 Municipal heat, light, and ice plants; construction; operation.

Primary cities, first-class cities, second-class cities, and villages shall have the power to purchase, construct, maintain and improve heating and lighting systems and ice plants for the use of their respective municipalities and the inhabitants thereof.

Source: Laws 1919, c. 181, § 1, p. 404; Laws 1921, c. 128, § 1, p. 538; C.S.1922, § 4396; C.S.1929, § 18-101.

City could not buy completely new power plant without an authorizing election. Nacke v. City of Hebron, 155 Neb. 739, 53 N.W.2d 564 (1952).

An action against village under declaratory judgment act alleging violation of above statute by the village board is not properly brought where members of such board are not made parties. Southern Nebraska Power Co. v. Village of Deshler, 130 Neb. 133, 264 N.W. 462 (1936).

Cities of the second class have power to purchase, construct, maintain, and improve lighting systems, but have neither express nor implied power to purchase and pay for them by pledge of future net earnings. Interstate Power Co. v. City of Ainsworth, 125 Neb. 419, 250 N.W. 649 (1933).

A city or village has power to construct and operate an electric light system for the purpose of furnishing lights and pumping water for the use of the city and its inhabitants. Bell v. City of David City, 94 Neb. 157, 142 N.W. 523 (1913).

The power of a city is not limited in constructing a plant to one costing not more than the amount of bonds that may be so issued. Village of Oshkosh v. Fairbanks, Morse & Co., 8 F.2d 329 (8th Cir. 1925).

19-1402 Municipal heat, light, and ice plants; cost; how defrayed.

The cost of such utilities may be defrayed by the levy of a tax of not to exceed three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village in any one year for a heating or lighting plant and of not to exceed two and one-tenth cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village in any one year for an ice plant, or when such tax is insufficient for the purpose, the cost of such utilities may be defrayed by the issuance of bonds of the municipality.

Source: Laws 1919, c. 181, § 2, p. 405; C.S.1922, § 4397; C.S.1929, § 18-102; R.S.1943, § 19-1402; Laws 1953, c. 287, § 36, p. 952; Laws 1979, LB 187, § 82; Laws 1992, LB 719A, § 82.

Two methods are provided of raising funds for a heating or lighting plant, one by a direct levy of a tax and the other by a bond issue, but this section does not provide specifically any method for raising funds to maintain and improve them. Interstate Power Co. v. City of Ainsworth, 125 Neb. 419, 250 N.W. 649 (1933).

Where a city of the second class has on hand sufficient available money it may use the same to pay the purchase price of a municipal lighting utility. The word ''may'' in the statute authorizing such city to defray the cost of a municipal lighting plant by means of a tax levy or a bond issue does not necessarily mean ''shall'' or exclude other methods. Carr v. Fenstermacher, 119 Neb. 172, 228 N.W. 114 (1929).

A city was required to levy a tax for the payment of a judgment for amount of cost of constructing two utility plants in excess of bonds the city was authorized to issue. Village of Oshkosh v. State of Nebraska ex rel. Fairbanks, Morse & Co., 20 F.2d 621 (8th Cir. 1927).

The power of a city is not limited to construct a plant to one costing not more than the amount of bonds that may be so issued. Village of Oshkosh v. Fairbanks, Morse & Co., 8 F.2d 329 (8th Cir. 1925).

19-1403 Municipal heat, light, and ice plants; bonds; interest; amount; approval of electors; tax.

The question of issuing bonds for any of the purposes mentioned in section 19-1401 shall be submitted to the electors at an election held for that purpose after not less than thirty days' notice thereof has been given (1) by publication in some newspaper published and of general circulation in such municipality or (2) if no newspaper is published therein, by posting in five or more public places therein. Such bonds may be issued only when a majority of the electors voting on the question favor their issuance. They shall bear interest, payable annually or semiannually, and shall be payable at any time the municipality may determine at the time of their issuance but in not more than twenty years after their issuance. The aggregate amount of bonds that may be issued for the construction or the purchase of a heating or lighting plant shall not exceed four percent of the taxable value of the assessed property and, for the construction or purchase of an ice plant, shall not exceed one percent of the taxable value of the assessed property within such municipality, as shown by the last annual assessment. The council or board shall levy annually a sufficient tax to maintain, operate, and extend any system or plant and to provide for the payment of the interest on and principal of any bonds that may have been or shall be issued as provided in this section.

Source: Laws 1919, c. 181, § 3, p. 405; Laws 1921, c. 128, § 2, p. 538; C.S.1922, § 4398; C.S.1929, § 18-103; R.S.1943, § 19-1403; Laws 1955, c. 59, § 1, p. 188; Laws 1969, c. 51, § 73, p. 320; Laws 1971, LB 534, § 24; Laws 1992, LB 719A, § 83.

This section referred to in connection with holding that an ordinance fixing rates for electrical energy supplied by city-owned plant is not subject to referendum. Hoover v. Carpenter, 188 Neb. 405, 197 N.W.2d 11 (1972).

An action against village under declaratory judgment act alleging violation of above statute by the village board is not properly brought where members of such board are not made parties. Southern Nebraska Power Co. v. Village of Deshler, 130 Neb. 133, 264 N.W. 462 (1936).

This section has no application to raising funds or issuing bonds to maintain or improve a light plant. Interstate Power Co. v. City of Ainsworth, 125 Neb. 419, 250 N.W. 649 (1933).

The procedure prescribed hereby for issuing bonds is not applicable where equipment for municipal lighting plant is paid for out of funds on hand and net earnings of plant. Carr v. Fenstermacher, 119 Neb. 172, 228 N.W. 114 (1929).

A writ of mandamus was issued compelling the Auditor of Public Accounts to register bonds, when issued within scope of general powers of a city to pay debt incurred for repair and restoration of light plant even though no previous appropriation was made for the debt. State ex rel. City of Tekamah v. Marsh, 108 Neb. 835, 189 N.W. 381 (1922).

The provisions of the city charter of cities having a population of from five thousand to twenty-five thousand inhabitants at the time of the submission and election must govern and be complied with. Brownfield v. City of Kearney, 94 Neb. 419, 143 N.W. 475 (1913).

The power of a city is not limited in constructing a plant to one costing not more than the amount of bonds that may be so issued. Village of Oshkosh v. Fairbanks, Morse & Co., 8 F.2d 329 (8th Cir. 1925).

19-1404 Municipal heat, light, and ice plants; management; rates; service.

When any such utility shall have been established, the municipality shall provide by ordinance for the management thereof, the rates to be charged, and the manner of payment for service or for the product.

Source: Laws 1919, c. 181, § 4, p. 405; C.S.1922, § 4399; C.S.1929, § 18-104.

The duty of a city to fix reasonable rates for electricity furnished to consumers through a municipal lighting plant is not violated by a contract to purchase necessary equipment for it and to pay a portion of the purchase price out of its net earnings, where contract provided that such earnings should be based alone on lawful charges. Carr v. Fenstermacher, 119 Neb. 172, 228 N.W. 114 (1929).

19-1405 Repealed. Laws 1976, LB 688, § 2.

ARTICLE 15

INCOMPLETELY PERFORMED CONTRACTS
(Applicable to all except cities of the metropolitan class.)

19-1501 Incompletely performed contracts; acceptance; tax levy; bond issue.

In all cases where a primary city, a city of the first or second class, or village has heretofore entered into a contract for paving or otherwise improving a street or streets therein, or for the construction or improvement of a system of waterworks or sanitary or storm sewers, and the contract has not been completed on account of any order or regulation issued by the United States or any board or agency thereof, such city or village may accept that part of the work which has been completed, levy special assessments and taxes, and issue bonds to pay the cost of the work so completed and accepted, in the same manner and on the same conditions as if said contract had been fully completed.

Source: Laws 1943, c. 40, § 1, p. 184.

19-1502 Additional authority granted.

Section 19-1501 shall be construed as granting additional authority and not as repealing any law now in force.

Source: Laws 1943, c. 40, § 2, p. 185.

ARTICLE 16

COMBINING OFFICES OF CITY CLERK AND CITY TREASURER

19-1601 Transferred to section 16-318.01.

ARTICLE 17

LAW ENFORCEMENT IN DEFENSE AREAS

19-1701 Expiration of act.

ARTICLE 18

CIVIL SERVICE ACT

Section
19-1812. Transferred to section 19-1837.
19-1813. Transferred to section 19-1838.
19-1814. Transferred to section 19-1839.
19-1815. Transferred to section 19-1840.
19-1816. Transferred to section 19-1841.
19-1817. Transferred to section 19-1842.
19-1818. Transferred to section 19-1843.
19-1819. Transferred to section 19-1844.
19-1820. Transferred to section 19-1845.
19-1821. Transferred to section 19-1846.
19-1822. Transferred to section 19-1847.
19-1823. Transferred to section 19-1826.
19-1824. Transferred to section 48-1209.01.
19-1825. Act, how cited.
19-1826. Terms, defined.
19-1827. Civil service commission; applicability; members; appointment; compensation; term; removal; appeal; quorum.
19-1828. Application of act.
19-1829. Employees subject to act; appointment; promotion.
19-1830. Civil service commission; organization; meetings; appointment; discharge; duties of commission; enumeration; rules and regulations.
19-1831. Civil service; applicant for position; qualifications; fingerprints; when required; restrictions on release.
19-1832. Civil service; employees; discharge; demotion; grounds.
19-1833. Civil service; employees; discharge; demotion; procedure; investigation; appeal.
19-1834. Civil service; municipality provide facilities and assistance.
19-1835. Civil service; vacancies; procedure.
19-1836. Civil service; creation or elimination of positions.
19-1837. Civil service; employees; salaries; compliance with act.
19-1838. Civil service; leave of absence.
19-1839. Civil service commission; conduct of litigation; representation.
19-1840. Civil service; obstructing examinations.
19-1841. Civil service; political service disregarded.
19-1842. Municipality; duty to enact appropriate legislation; failure; effect.
19-1843. Municipality; duty to provide quarters and equipment; failure; effect.
19-1844. Municipality; duty to create commission; failure; effect.
19-1845. Commission; duty to organize; rules and regulations; failure; effect.
19-1846. Municipality; duty to make appropriation.
19-1847. Violations; penalty.

19-1801 Transferred to section 19-1827.

19-1802 Transferred to section 19-1828.

19-1803 Transferred to section 19-1829.

19-1803.01 Repealed. Laws 1985, LB 372, § 27.

19-1804 Transferred to section 19-1830.

19-1805 Repealed. Laws 1985, LB 372, § 27.

19-1806 Transferred to section 19-1831.

19-1807 Transferred to section 19-1832.

19-1808 Transferred to section 19-1833.

19-1809 Transferred to section 19-1834.

19-1810 Transferred to section 19-1835.

19-1811 Transferred to section 19-1836.

19-1812 Transferred to section 19-1837.

19-1813 Transferred to section 19-1838.

19-1814 Transferred to section 19-1839.

19-1815 Transferred to section 19-1840.

19-1816 Transferred to section 19-1841.

19-1817 Transferred to section 19-1842.

19-1818 Transferred to section 19-1843.

19-1819 Transferred to section 19-1844.

19-1820 Transferred to section 19-1845.

19-1821 Transferred to section 19-1846.

19-1822 Transferred to section 19-1847.

19-1823 Transferred to section 19-1826.

19-1824 Transferred to section 48-1209.01.

19-1825 Act, how cited.

Sections 19-1825 to 19-1847 shall be known and may be cited as the Civil Service Act.

Source: Laws 1985, LB 372, § 4.

19-1826 Terms, defined.

As used in the Civil Service Act, unless the context otherwise requires:

(1) Commission shall mean a civil service commission created pursuant to the Civil Service Act, and commissioner shall mean a member of such commission;

(2) Appointing authority shall mean: (a) In a mayor and council form of government, the mayor with the approval of the council, except to the extent that the appointing authority is otherwise designated by ordinance to be the mayor or city administrator; (b) in a commission form of government, the mayor and city council or village board; (c) in a village form of government, the village board; and (d) in a city manager plan of government, the city manager;

(3) Appointment shall mean all means of selecting, appointing, or employing any person to hold any position or employment subject to civil service;

(4) Municipality shall mean all cities and villages specified in subsection (1) of section 19-1827 having full-time police officers or full-time firefighters;

(5) Governing body shall mean: (a) In a mayor and council form of government, the mayor and council; (b) in a commission form of government, the mayor and council or village board; (c) in a village form of government, the

village board; and (d) in a city manager plan of government, the mayor and council;

(6) Full-time police officers shall mean police officers in positions which require certification by the Nebraska Law Enforcement Training Center, created pursuant to section 81-1402, who have the power of arrest, who are paid regularly by a municipality, and for whom law enforcement is a full-time career, but shall not include clerical, custodial, or maintenance personnel;

(7) Full-time firefighter shall mean duly appointed firefighters who are paid regularly by a municipality and for whom firefighting is a full-time career, but shall not include clerical, custodial, or maintenance personnel who are not engaged in fire suppression;

(8) Promotion or demotion shall mean changing from one position to another, accompanied by a corresponding change in current rate of pay; and

(9) Position shall mean an individual job which is designated by an official title indicative of the nature of the work.

Source: Laws 1943, c. 29, § 23, p. 138; R.S.1943, § 19-1823; Laws 1957, c. 48, § 7, p. 236; R.S.1943, (1983), § 19-1823; Laws 1985, LB 372, § 5.

Fully paid fire department means a fire department having members paid regularly by city and devoting their whole time to firefighting. State ex rel. Retchless v. Cook, 181 Neb. 863, 152 N.W.2d 23 (1967).

By definition contained in this section, employee is required to devote his whole time to firefighting or law enforcement. Dlouhy v. City of Fremont, 175 Neb. 115, 120 N.W.2d 590 (1963).

19-1827 Civil service commission; applicability; members; appointment; compensation; term; removal; appeal; quorum.

(1) There is hereby created, in cities in the State of Nebraska having a population of more than five thousand and having full-time police officers or full-time firefighters, a civil service commission, except in cities with a population in excess of forty thousand which have or may adopt a home rule charter pursuant to sections 2 to 5 of Article XI of the Constitution of this state. Any city or village having a population of five thousand or less may adopt the Civil Service Act and create a civil service commission by a vote of the electors of such city or village. If any city of the first class which established a civil service commission decreases in population to less than five thousand, as determined by the latest federal census, and continues to have full-time police officers or full-time firefighters, the civil service commission shall be continued for at least four years, and thereafter continued at the option of the local governing body of such city. The members of such commission shall be appointed by the appointing authority.

(2) The governing body shall by ordinance determine if the commission shall be comprised of three or five members. The members of the civil service commission shall serve without compensation. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such municipality for at least three years immediately preceding such appointment, and an elector of the county wherein such person resides. If the commission is comprised of three members, the term of office of such commissioners shall be six years, except that the first three members of such commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. If the commission is comprised of five members, the term of office of such members shall be for five years, except that the first members

of such commission shall be appointed for different terms, as follows: One to serve for a period of one year, one to serve for a period of two years, one to serve for a period of three years, one to serve for a period of four years, and one to serve for a period of five years. If the municipality determines by ordinance to change from a three-member commission to a five-member commission, or from a five-member commission to a three-member commission, the members of the commission serving before the effective date of such ordinance shall hold office until reappointed or their successors are appointed.

(3) Any member of the civil service commission may be removed from office for incompetency, dereliction of duty, malfeasance in office, or other good cause by the appointing authority, except that no member of the commission shall be removed until written charges have been preferred, due notice given such member, and a full hearing had before the appointing authority. Any member so removed shall have the right to appeal to the district court of the county in which such commission is located, which court shall hear and determine such appeal in a summary manner. Such an appeal shall be only upon the ground that such judgment or order of removal was not made in good faith for cause, and the hearing on such appeal shall be confined to the determination of whether or not it was so made.

(4) The members of the civil service commission shall devote due time and attention to the performance of the duties specified and imposed upon them by the Civil Service Act. Two commissioners in a three-member commission and three commissioners in a five-member commission shall constitute a quorum for the transaction of business. Confirmation of the appointment or appointments of commissioners, made under subsection (1) of this section, by any other legislative body shall not be required. At the time of any appointment, not more than two commissioners of a three-member commission, or three commissioners of a five-member commission, including the one or ones to be appointed, shall be registered electors of the same political party.

Source: Laws 1943, c. 29, § 1, p. 125; R.S.1943, § 19-1801; Laws 1957, c. 48, § 1, p. 228; Laws 1963, c. 89, § 5, p. 304; Laws 1983, LB 291, § 1; R.S.1943, (1983), § 19-1801; Laws 1985, LB 372, § 6.

Procedure regulating discharge of city employee in classified civil service is governed by the Nebraska Civil Service Act. Wachtel v. Fremont Civil Service Commission, 190 Neb. 49, 206 N.W.2d 56 (1973).

This article prescribes civil service for cities having a full paid fire or police department. State ex rel. Retchless v. Cook, 181 Neb. 863, 152 N.W.2d 23 (1967).

Civil Service Act is applicable to all cities having a full paid fire or police department. Dlouhy v. City of Fremont, 175 Neb. 115, 120 N.W.2d 590 (1963).

19-1828 Application of act.

The Civil Service Act shall apply to all municipalities, as defined in section 19-1826, in the State of Nebraska specified in subsection (1) of section 19-1827. All present full-time firefighters and full-time police officers of such municipalities and future appointees to such full-time positions shall be subject to civil service.

Source: Laws 1943, c. 29, § 2, p. 127; R.S.1943, § 19-1802; Laws 1957, c. 48, § 2, p. 230; R.S.1943, (1983), § 19-1802; Laws 1985, LB 372, § 7.

19-1829 Employees subject to act; appointment; promotion.

The Civil Service Act shall only apply to full-time firefighters or full-time police officers of each municipality, including any paid full-time police or fire chief of such department. All appointments to and promotions in such department shall be made solely on merit, efficiency, and fitness, which shall be ascertained by open competitive examination and impartial investigation. If the appointing authority fills a vacancy in a position subject to the Civil Service Act, the appointing authority shall consider factors including, but not limited to:

(1) The multiple job skills recently or currently being performed by the applicant which are necessary for the position;

(2) The knowledge, skills, and abilities of the applicant which are necessary for the position;

(3) The performance appraisal of any applicant who is already employed in the department, including any recent or pending disciplinary actions involving the employee;

(4) The employment policies and staffing needs of the department together with contracts, ordinances, and statutes related thereto;

(5) Required federal, state, or local certifications or licenses necessary for the position; and

(6) The qualifications of the applicants who are already employed in the department and have successfully completed all parts of the examination for the position. No person shall be reinstated in or transferred, suspended, or discharged from any such position or employment contrary to the Civil Service Act.

Source: Laws 1943, c. 29, § 3, p. 127; R.S.1943, § 19-1803; Laws 1957, c. 48, § 3, p. 230; Laws 1969, c. 116, § 1, p. 530; R.S.1943, (1983), § 19-1803; Laws 1985, LB 372, § 8.

Civil Service Act applies to all full paid employees of the fire or police department. Dlouhy v. City of Fremont, 175 Neb. 115, 120 N.W.2d 590 (1963).

Civil Service Act applies to cities of first class having home rule charters. Simpson v. City of Grand Island, 166 Neb. 393, 89 N.W.2d 117 (1958).

19-1830 Civil service commission; organization; meetings; appointment; discharge; duties of commission; enumeration; rules and regulations.

(1) Immediately after the appointment of the commission, and annually thereafter, the commission shall organize by electing one of its members chairperson. The commission shall hold meetings as may be required for the proper discharge of its duties. The commission shall appoint a secretary and a chief examiner who shall keep the records of the commission, preserve all reports made to it, superintend and keep a record of all examinations held under its direction, and perform such other duties as the commission may prescribe. The commission may merge the positions of secretary and chief examiner and appoint one person to perform the duties of both positions. If the municipality has a personnel officer, the commission shall appoint such personnel officer as secretary and chief examiner, if requested to do so by the appointing authority. The secretary and chief examiner shall be subject to suspension or discharge upon the vote of a majority of the appointed members of the commission.

(2) The commission shall adopt and promulgate procedural rules and regulations consistent with the Civil Service Act. Such rules and regulations shall provide in detail the manner in which examinations may be held and any other

matters assigned by the appointing authority. At least one copy of the rules and regulations, and any amendments, shall be made available for examination and reproduction by members of the public. One copy of the rules and regulations and any amendments shall be given to each full-time firefighter and full-time police officer.

(3) The commission shall provide that all tests shall be practical and consist only of subjects which will fairly determine the capacity of persons who are to be examined to perform the duties of the position to which an appointment is to be made and may include, but not be limited to, tests of physical fitness and of manual skill and psychological testing.

(4) The commission shall provide, by the rules and regulations, for a credit of ten percent in favor of all applicants for an appointment under civil service who, in time of war or in any expedition of the armed forces of the United States, have served in and been discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) from the armed forces of the United States and who have equaled or exceeded the minimum qualifying standard established by the appointing authority. These credits shall only apply to entry-level positions as defined by the appointing authority.

(5) The commission may conduct an investigation concerning and report upon all matters regarding the enforcement and effect of the Civil Service Act and the rules and regulations prescribed. The commission may inspect all institutions, departments, positions, and employments affected by such act to determine whether such act and all such rules and regulations are being obeyed. Such investigations may be conducted by the commission or by any commissioner designated by the commission for that purpose. The commission shall also make a like investigation on the written petition of a citizen, duly verified, stating that irregularities or abuses exist or setting forth, in concise language, the necessity for such an investigation. The commission may be represented in such investigations by the municipal attorney, if authorized by the appointing authority. If the municipal attorney does not represent the commission, the commission may be represented by special counsel appointed by the commission in any such investigation. In the course of such an investigation, the commission, designated commissioner, or chief examiner shall have the power to administer oaths, issue subpoenas to require the attendance of witnesses and the production by them of books, papers, documents, and accounts appertaining to the investigation, and to cause the deposition of witnesses, residing within or without the state, to be taken in the manner prescribed by law for like depositions in civil actions in the courts of this state. The oaths administered and subpoenas issued shall have the same force and effect as the oaths administered by a district judge in a judicial capacity and subpoenas issued by the district courts of Nebraska. The failure of any person so subpoenaed to comply shall be deemed a violation of the Civil Service Act and be punishable as such. No investigation shall be made pursuant to this section if there is a written accusation concerning the same subject matter against a person in the civil service. Such accusations shall be handled pursuant to section 19-1833.

(6) The commission shall provide that all hearings and investigations before the commission, designated commissioner, or chief examiner shall be governed by the Civil Service Act and the rules of practice and procedure to be adopted by the commission. In the conduct thereof, they shall not be bound by the

technical rules of evidence. No informality in any proceedings or hearing or in the manner of taking testimony shall invalidate any order, decision, rule, or regulation made, approved, or confirmed by the commission, except that no order, decision, rule, or regulation made by any designated commissioner conducting any hearing or investigation alone shall be of any force or effect unless it is concurred in by a majority of the appointed members of the commission, including the vote of any commissioner making the investigation.

(7) The commission shall establish and maintain a roster of officers and employees.

(8) The commission shall provide for, establish, and hold competitive tests to determine the relative qualifications of persons who seek employment in any position and, as a result thereof, establish eligible lists for the various positions.

(9) The commission shall make recommendations concerning a reduction-in-force policy to the governing body or city manager in a city manager plan of government. The governing body or city manager in a city manager plan of government shall consider such recommendations, but shall not be bound by them in establishing a reduction-in-force policy. Prior to the adoption of a reduction-in-force policy, the governing body or, in the case of a city manager plan, the city manager and the governing body shall, after giving reasonable notice to each police officer and firefighter by first-class mail, conduct a public hearing.

(10) The governing body shall in all municipalities, except those with a city manager plan in which the city manager shall, adopt a reduction-in-force policy which shall consider factors including, but not limited to:

(a) The multiple job skills recently or currently being performed by the employee;

(b) The knowledge, skills, and abilities of the employee;

(c) The performance appraisal of the employee including any recent or pending disciplinary actions involving the employee;

(d) The employment policies and staffing needs of the department together with contracts, ordinances, and statutes related thereto;

(e) Required federal, state, or local certifications or licenses; and

(f) Seniority.

(11) The commission shall keep such records as may be necessary for the proper administration of the Civil Service Act.

Source: Laws 1943, c. 29, § 4, p. 127; R.S.1943, § 19-1804; Laws 1957, c. 48, § 4, p. 230; R.S.1943, (1983), § 19-1804; Laws 1985, LB 372, § 9; Laws 2005, LB 54, § 3.

The commission must timely make rules and regulations but absence of such does not prevent discharge for reasons set out in statute. Sailors v. City of Falls City, 190 Neb. 103, 206 N.W.2d 566 (1973).

19-1831 Civil service; applicant for position; qualifications; fingerprints; when required; restrictions on release.

(1) An applicant for a position of any kind under civil service shall be able to read and write the English language, meet the minimum job qualifications of the position as established by the appointing authority, and be of good moral character. An applicant shall be required to disclose his or her past employment history and his or her criminal record, if any, and submit a full set of his

or her fingerprints and a written statement of permission authorizing the appointing authority to forward the fingerprints for identification. Prior to certifying to the appointing authority the names of the persons eligible for the position or positions, the commission shall validate the qualifications of such persons.

(2) The appointing authority shall require an applicant, as part of the application process, to submit a full set of his or her fingerprints along with written permission authorizing the appointing authority to forward the fingerprints to the Federal Bureau of Investigation through the Nebraska State Patrol, for identification. The fingerprint identification shall be solely for the purpose of confirming information provided by the applicant.

(3) Any fingerprints received by the commission or appointing authority pursuant to a request made under subsection (2) of this section and any information in the custody of the commission or appointing authority resulting from inquiries or investigations made with regard to those fingerprints initiated by the commission or appointing authority shall not be a public record within the meaning of sections 84-712 to 84-712.09 and shall be withheld from the public by the lawful custodians of such fingerprints and information and shall only be released to those lawfully entitled to the possession of such fingerprints and information. Any member, officer, agent, or employee of the commission, appointing authority, or municipality who comes into possession of fingerprints and information gathered pursuant to subsection (2) of this section shall be an official within the meaning of section 84-712.09.

Source: Laws 1943, c. 29, § 6, p. 131; R.S.1943, § 19-1806; Laws 1963, c. 93, § 1, p. 317; Laws 1969, c. 116, § 3, p. 531; Laws 1974, LB 811, § 3; Laws 1977, LB 498, § 1; R.S.1943, (1983), § 19-1806; Laws 1985, LB 372, § 10; Laws 1997, LB 116, § 1.

19-1832 Civil service; employees; discharge; demotion; grounds.

The tenure of a person holding a position of employment under the Civil Service Act shall be only during good behavior. Any such person may be removed or discharged, suspended with or without pay, demoted, reduced in rank, or deprived of vacation, benefits, compensation, or other privileges, except pension benefits, for any of the following reasons:

(1) Incompetency, inefficiency, or inattention to or dereliction of duty;

(2) Dishonesty, prejudicial conduct, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee, any act of omission or commission tending to injure the public service, any willful failure on the part of the employee to properly conduct himself or herself, or any willful violation of the Civil Service Act or the rules and regulations adopted pursuant to such act;

(3) Mental or physical unfitness for the position which the employee holds;

(4) Drunkenness or the use of intoxicating liquors, narcotics, or any other habit-forming drug, liquid, or preparation to such an extent that the use interferes with the efficiency or mental or physical fitness of the employee or precludes the employee from properly performing the functions and duties of his or her position;

(5) Conviction of a felony or misdemeanor tending to injure the employee's ability to effectively perform the duties of his or her position; or

(6) Any other act or failure to act which, in the judgment of the civil service commissioners, is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service.

Source: Laws 1943, c. 29, § 7, p. 131; R.S.1943, § 19-1807; R.S.1943, (1983), § 19-1807; Laws 1985, LB 372, § 11.

An employee's acquittal on a criminal charge does not preclude an employer from terminating employment for the identical conduct that formed the basis for the criminal charge. Adkins & Webster v. North Platte Civil Service Comm., 206 Neb. 500, 293 N.W.2d 411 (1980).

The Civil Service Act, where applicable, provides that employees may be suspended or discharged for cause for any of the reasons listed herein. Cummings v. City of Falls City, 194 Neb. 759, 235 N.W.2d 627 (1975).

The Civil Service Act prohibits the suspension or discharge of employees for political or religious reasons but provides they may be suspended or discharged for any of the reasons listed herein. Sailors v. City of Falls City, 190 Neb. 103, 206 N.W.2d 566 (1973).

The tenure of an employee is only during good behavior. Ackerman v. Civil Service Commission, 177 Neb. 232, 128 N.W.2d 588 (1964).

19-1833 Civil service; employees; discharge; demotion; procedure; investigation; appeal.

(1) No person in the civil service who shall have been permanently appointed or inducted into civil service under the Civil Service Act shall be removed, suspended, demoted, or discharged except for cause and then only upon the written accusation of the police or fire chief, appointing authority, or any citizen or taxpayer.

(2) The governing body of the municipality shall establish by ordinance procedures for acting upon such written accusations and the manner by which suspensions, demotions, removals, discharges, or other disciplinary actions may be imposed by the appointing authority. At least one copy of the rules and regulations, and any amendments to such rules and regulations, shall be made available for examination and reproduction by members of the public. One copy of the rules and regulations and any such amendments shall be given to each full-time firefighter and full-time police officer.

(3) Any person so removed, suspended, demoted, or discharged may, within ten days after being notified by the appointing authority of such removal, suspension, demotion, or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The governing body of the municipality shall establish procedures by ordinance consistent with this section by which the commission shall conduct such investigation. At least one copy of the rules and regulations, and any amendments to such rules and regulations, shall be made available for examination and reproduction by members of the public. One copy of the rules and regulations and any such amendments shall be given to each full-time firefighter and full-time police officer. Such procedures shall comply with minimum due process requirements. The commission may be represented in such investigation and hearing by the municipal attorney if authorized by the appointing authority. If the municipal attorney does not represent the commission, the commission may be represented by special counsel appointed by the commission for any such investigation and hearing. The investigation shall be confined to the determination of the question of whether or not such removal, suspension, demotion, or discharge was made in good faith for cause which shall mean that the action was not arbitrary or capricious and was not made for political or religious reasons.

(4) After such investigation, the commission shall hold a public hearing after giving reasonable notice to the accused of the time and place of such hearing. Such hearing shall be held not less than ten or more than twenty days after

filing of the written demand for an investigation and a decision shall be rendered no later than ten days after the hearing. At such hearing the accused shall be permitted to appear in person and by counsel and to present his or her defense. The commission may affirm the action taken if such action of the appointing authority is supported by a preponderance of the evidence. If it shall find that the removal, suspension, demotion, or discharge was made for political or religious reasons or was not made in good faith for cause, it shall order the immediate reinstatement or reemployment of such person in the position or employment from which such person was removed, suspended, demoted, or discharged, which reinstatement shall, if the commission in its discretion so provides, be retroactive and entitle such person to compensation and restoration of benefits and privileges from the time of such removal, suspension, demotion, or discharge. The commission upon such hearing, in lieu of affirming the removal, suspension, demotion, or discharge, may modify the order of removal, suspension, demotion, or discharge by directing a suspension, with or without pay, for a given period and the subsequent restoration to duty or demotion in position or pay. The findings of the commission shall be certified in writing to and enforced by the appointing authority.

(5) If such judgment or order be concurred in by the commission or a majority thereof, the accused or governing body may appeal to the district court. Such appeal shall be taken within forty-five days after the entry of such judgment or order by serving the commission with a written notice of appeal stating the grounds and demanding that a certified transcript of the record and all papers, on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten days after the filing of such notice, make, certify, and file such transcript with and deliver such papers to the district court. The district court shall proceed to hear and determine such appeal in a summary manner. The hearing shall be confined to the determination of whether or not the judgment or order of removal, discharge, demotion, or suspension made by the commission was made in good faith for cause which shall mean that the action of the commission was based upon a preponderance of the evidence, was not arbitrary or capricious, and was not made for political or religious reasons. No appeal to such court shall be taken except upon such ground or grounds.

If such appeal is taken by the governing body and the district court affirms the decision of the commission, the municipality shall pay to the employee court costs and reasonable attorney's fees incurred as a result of such appeal and as approved by the district court. If such appeal is taken by the governing body and the district court does not affirm the decision of the commission, the court may award court costs and reasonable attorney's fees to the employee as approved by the district court.

Source: Laws 1943, c. 29, § 8, p. 132; R.S.1943, § 19-1808; Laws 1957, c. 48, § 6, p. 234; Laws 1959, c. 65, § 2, p. 289; Laws 1969, c. 116, § 4, p. 531; R.S.1943, (1983), § 19-1808; Laws 1985, LB 372, § 12.

For the purposes of this section, the phrase in good faith for cause shall mean a commission's action which is based on competent evidence, neither arbitrary or capricious nor the result of political or religious reasons, and reasonably necessary for effectual and beneficial public service. In re Appeal of Levos, 214 Neb. 507, 335 N.W.2d 262 (1983).

Conclusive, as used in this section, does not refer to burden of proof nor the weight of the evidence but is synonymous with decisive, determinative, or definitive. Adkins & Webster v. North Platte Civil Service Comm., 206 Neb. 500, 293 N.W.2d 411 (1980).

The final determination of discharge, under this act, rests with the civil service commission. Adkins & Webster v. North Platte Civil Service Comm., 206 Neb. 500, 293 N.W.2d 411 (1980).

Upon written accusation before the commission either the appointing power may temporarily suspend or the commission may direct such suspension. Sailors v. City of Falls City, 190 Neb. 103, 206 N.W.2d 566 (1973).

Power to discharge city employee in classified civil service is lodged solely in Civil Service Commission. Wachtel v. Fremont Civil Service Commission, 190 Neb. 49, 206 N.W.2d 56 (1973).

Only issue on appeal from the civil service commission to district court is whether commission's order was made in good faith for cause. Fredrickson v. Albertsen, 183 Neb. 494, 161 N.W.2d 712 (1968).

An employee who is discharged may file with the civil service commission a written demand for an investigation. Ackerman v. Civil Service Commission, 177 Neb. 232, 128 N.W.2d 588 (1964).

Discharged employee may appeal to district court from action of civil service commission. Dlouhy v. City of Fremont, 175 Neb. 115, 120 N.W.2d 590 (1963).

Where fireman voluntarily abandoned his position, he lost all benefits under Civil Service Act. State ex rel. Schaub v. City of Scottsbluff, 169 Neb. 525, 100 N.W.2d 202 (1960).

Employee in classified civil service could not be discharged by city council. Simpson v. City of Grand Island, 166 Neb. 393, 89 N.W.2d 117 (1958).

19-1834 Civil service; municipality provide facilities and assistance.

The municipality shall afford the commission and its members and employees all reasonable facilities and assistance to inspect all books, papers, documents, and accounts applying or in any way appertaining to any and all positions and employments subject to civil service and shall produce such books, papers, documents, and accounts. All municipal officers and employees shall attend and testify whenever required to do so by the commission, the accused, or the appointing authority.

Source: Laws 1943, c. 29, § 9, p. 133; R.S.1943, § 19-1809; R.S.1943, (1983), § 19-1809; Laws 1985, LB 372, § 13.

19-1835 Civil service; vacancies; procedure.

(1) Whenever a position subject to the Civil Service Act becomes vacant, the appointing authority shall make requisition upon the commission for the names and addresses of the persons eligible for appointment and may decline to fill such vacancy for an indefinite period.

(2) The commission, upon request of the appointing authority, shall establish and maintain a list, for a period of time established by the appointing authority, of those eligible for appointment to or promotion within the department. Such list shall be established and maintained through the open competitive examinations required by section 19-1829, with the time and date of any examination to be established by the appointing authority. Any person having satisfactorily passed the examination for any position shall be placed on the list of those eligible for appointment or promotion to such position.

(3) Upon the request of the appointing authority, the commission shall certify the names of the persons who are the three highest on the eligible list, following the most recent examination, and whose qualifications have been validated by the commission for the vacant position. If fewer than three names are on the eligible list the commission shall certify those that do appear. If the commission certifies fewer than three names for each vacancy to the appointing authority, the appointing authority may appoint one of such persons to fill the vacancy, may decline to fill the vacancy, or may order that another examination be held by the civil service commission.

(4) If a vacancy occurs and there is no eligible list for the position or if the commission has not certified persons from the eligible list, a temporary appointment may be made by the appointing authority. Such temporary appointment shall not continue for a period longer than four months. No person shall receive more than one temporary appointment or serve more than four months as a temporary appointee in any one fiscal year.

(5) To enable the appointing authority to exercise a choice in the filling of positions, no appointment, employment, or promotion in any position in the service shall be deemed complete until after the expiration of a period of three to six months' probationary service for firefighters and not less than six months nor more than one year after certification by the Nebraska Law Enforcement Training Center for police officers, as may be provided in the rules of the civil service commission, during which time the appointing authority may terminate the employment of the person appointed by it if, during the performance test thus afforded and upon an observation or consideration of the performance of duty, the appointing authority deems such person unfit or unsatisfactory for service in the department. The appointing authority may appoint one of the other persons certified by the commission and such person shall likewise enter upon such duties until some person is found who is fit for appointment, employment, or promotion for the probationary period provided and then the appointment, employment, or promotion shall be complete.

Source: Laws 1943, c. 29, § 10, p. 134; R.S.1943, § 19-1810; Laws 1967, c. 97, § 1, p. 295; R.S.1943, (1983), § 19-1810; Laws 1985, LB 372, § 14.

Civil service commission acted within bounds of its discretion in giving original entrance rather than promotion examination in selecting candidates for fire chief. Short v. Kissinger, 184 Neb. 491, 168 N.W.2d 917 (1969).

19-1836 Civil service; creation or elimination of positions.

All positions subject to the Civil Service Act shall be created or eliminated by the governing body of the municipality. The Civil Service Act shall not be construed to infringe upon the power and authority of (1) the governing body of the municipality to establish pursuant to section 16-310, 17-108, or 17-209 the salaries and compensation of all employees employed hereunder or (2) the city manager, pursuant to Chapter 19, article 6, to establish the salaries and compensation of employees within the compensation schedule or ranges established by the governing body for the positions.

Source: Laws 1943, c. 29, § 11, p. 135; R.S.1943, § 19-1811; R.S.1943, (1983), § 19-1811; Laws 1985, LB 372, § 15.

19-1837 Civil service; employees; salaries; compliance with act.

No treasurer, auditor, comptroller, or other officer or employee of any municipality subject to the Civil Service Act shall approve the payment of or be in any manner concerned in paying, auditing, or approving any salary, wage, or other compensation for services to any person subject to the jurisdiction and scope of the Civil Service Act unless the person to receive such salary, wage, or other compensation has been appointed or employed in compliance with such act.

Source: Laws 1943 , c. 29, § 12, p. 135; R.S.1943, § 19-1812; R.S.1943, (1983), § 19-1812; Laws 1985, LB 372, § 16.

19-1838 Civil service; leave of absence.

A leave of absence, with or without pay, may be granted by the appointing authority to any person under civil service. The appointing authority shall give notice of such leave to the commission. All appointments for temporary employ-

ment resulting from such leaves of absence shall be made from the eligible list, if any, of the civil service.

Source: Laws 1943, c. 29, § 13, p. 136; R.S.1943, § 19-1813; R.S.1943, (1983), § 19-1813; Laws 1985, LB 372, § 17.

19-1839 Civil service commission; conduct of litigation; representation.

It shall be the duty of the commission to begin and conduct all civil suits which may be necessary for the proper enforcement of the Civil Service Act and of the rules of the commission. The commission may be represented in such suits and all investigations pursuant to the Civil Service Act by the municipal attorney if authorized by the appointing authority. If the municipal attorney does not represent the commission, the commission may be represented by special counsel appointed by it in any particular case.

Source: Laws 1943, c. 29, § 14, p. 136; R.S.1943, § 19-1814; R.S.1943, (1983), § 19-1814; Laws 1985, LB 372, § 18.

19-1840 Civil service; obstructing examinations.

No commissioner or any other person shall by himself or herself or in cooperation with one or more persons (1) defeat, deceive, or obstruct any person in respect to the right of examination according to the rules and regulations made pursuant to the Civil Service Act, (2) falsely mark, grade, estimate, or report upon the examination and standing of any person examined or certified in accordance with such act or aid in so doing, (3) make any false representation concerning the same or concerning the persons examined, (4) furnish any person any special or secret information for the purpose of improving or injuring the prospects or chances of any person so examined or certified or to be examined or certified, or (5) persuade any other person or permit or aid in any manner any other person to impersonate him or her in connection with any examination, application, or request to be so examined.

Source: Laws 1943, c. 29, § 15, p. 136; R.S.1943, § 19-1815; R.S.1943, (1983), § 19-1815; Laws 1985, LB 372, § 19.

19-1841 Civil service; political service disregarded.

No person holding any position subject to civil service shall be under any obligation to contribute to any political fund or to render any political service to any person or party whatsoever. No person shall be removed, reduced in position or salary, or otherwise prejudiced for refusing so to do. No public officer, whether elected or appointed, shall discharge, promote, demote, or in any manner change the official rank, employment, or compensation of any person under civil service, or promise or threaten to do so, for giving, withholding, or neglecting to make any contribution of money, services, or any other valuable thing for any political purpose.

Source: Laws 1943, c. 29, § 16, p. 136; R.S.1943, § 19-1816; R.S.1943, (1983), § 19-1816; Laws 1985, LB 372, § 20.

19-1842 Municipality; duty to enact appropriate legislation; failure; effect.

Any municipality subject to the Civil Service Act shall, after September 6, 1985, enact appropriate legislation for carrying into effect such act. The failure

of the governing body of any such municipality to do so shall be a violation of the Civil Service Act and shall be punishable as such.

Source: Laws 1943, c. 29, § 17, p. 137; R.S.1943, § 19-1817; R.S.1943, (1983), § 19-1817; Laws 1985, LB 372, § 21.

19-1843 Municipality; duty to provide quarters and equipment; failure; effect.

The governing body of every municipality subject to the Civil Service Act shall provide the commission with suitable and convenient rooms and accommodations and cause the same to be furnished, heated, lighted, and supplied with all office supplies and equipment necessary to carry on the business of the commission and with such clerical assistance as may be necessary, all of which is to be commensurate with the number of persons in each such municipality subject to the Civil Service Act. Failure upon the part of the governing body to do so shall be a violation of the Civil Service Act and shall be punishable as such.

Source: Laws 1943, c. 29, § 18, p. 137; R.S.1943, § 19-1818; R.S.1943, (1983), § 19-1818; Laws 1985, LB 372, § 22.

19-1844 Municipality; duty to create commission; failure; effect.

Within ninety days after a municipality becomes subject to the Civil Service Act, it shall be the duty of the governing body of such municipality subject to such act to create a civil service commission, as provided in section 19-1827, and the failure upon the part of such governing body to do so shall be a violation of the Civil Service Act and shall be punishable as such.

Source: Laws 1943, c. 29, § 19, p. 137; R.S.1943, § 19-1819; R.S.1943, (1983), § 19-1819; Laws 1985, LB 372, § 23.

19-1845 Commission; duty to organize; rules and regulations; failure; effect.

It shall be the duty of each commission appointed subject to the Civil Service Act to immediately organize and adopt and promulgate procedural rules and regulations, consistent with the purpose of such act, to carry out such act. The failure upon the part of such commission or any individual member to do so shall be a violation of the Civil Service Act and shall be punishable as such.

Source: Laws 1943, c. 29, § 20, p. 137; R.S.1943, § 19-1820; R.S.1943, (1983), § 19-1820; Laws 1985, LB 372, § 24.

The commission must timely make rules and regulations but absence of such does not prevent discharge for reasons set out in statute. Sailors v. City of Falls City, 190 Neb. 103, 206 N.W.2d 566 (1973).

19-1846 Municipality; duty to make appropriation.

It shall be the duty of each municipality subject to the Civil Service Act to appropriate each fiscal year, from the general funds of such municipality, a sum of money sufficient to pay the necessary expenses involved in carrying out the purposes of such act, including, but not limited to, reasonable attorney's fees for any special counsel appointed by the commission when the municipal attorney is not authorized by the appointing authority to represent the commission. The appointing authority may establish the hourly or monthly rate of pay of such special counsel.

Source: Laws 1943, c. 29, § 21, p. 137; R.S.1943, § 19-1821; R.S.1943, (1983), § 19-1821; Laws 1985, LB 372, § 25.

19-1847 Violations; penalty.

Any person who shall willfully violate any of the provisions of the Civil Service Act shall be guilty of a Class IV misdemeanor.

Source: Laws 1943, c. 29, § 22, p. 138; R.S.1943, § 19-1822; R.S.1943, (1983), § 19-1822; Laws 1985, LB 372, § 26.

ARTICLE 19

MUNICIPAL BUDGET ACT

Section

19-1901 Repealed. Laws 1945, c. 36, § 1.

19-1902 Repealed. Laws 1945, c. 36, § 1.

19-1903 Repealed. Laws 1945, c. 36, § 1.

19-1904 Repealed. Laws 1945, c. 36, § 1.

19-1905 Repealed. Laws 1945, c. 36, § 1.

19-1906 Repealed. Laws 1945, c. 36, § 1.

19-1907 Repealed. Laws 1945, c. 36, § 1.

19-1908 Repealed. Laws 1945, c. 36, § 1.

19-1909 Repealed. Laws 1945, c. 36, § 1.

19-1910 Repealed. Laws 1945, c. 36, § 1.

19-1911 Repealed. Laws 1945, c. 36, § 1.

19-1912 Repealed. Laws 1945, c. 36, § 1.

19-1913 Repealed. Laws 1945, c. 36, § 1.

19-1914 Repealed. Laws 1945, c. 36, § 1.

19-1915 Repealed. Laws 1945, c. 36, § 1.

19-1916 Repealed. Laws 1945, c. 36, § 1.

19-1917 Repealed. Laws 1945, c. 36, § 1.

19-1918 Repealed. Laws 1945, c. 36, § 1.

19-1919 Repealed. Laws 1945, c. 36, § 1.

19-1920 Repealed. Laws 1945, c. 36, § 1.

19-1921 Repealed. Laws 1945, c. 36, § 1.

ARTICLE 20

MUNICIPAL RETIREMENT SYSTEM

Section

19-2001. Repealed. Laws 1971, LB 453, § 1.
19-2002. Repealed. Laws 1971, LB 453, § 1.
19-2003. Repealed. Laws 1971, LB 453, § 1.
19-2004. Repealed. Laws 1971, LB 453, § 1.
19-2005. Repealed. Laws 1971, LB 453, § 1.
19-2006. Repealed. Laws 1971, LB 453, § 1.
19-2007. Repealed. Laws 1971, LB 453, § 1.
19-2008. Repealed. Laws 1971, LB 453, § 1.
19-2009. Repealed. Laws 1971, LB 453, § 1.
19-2010. Repealed. Laws 1971, LB 453, § 1.
19-2011. Repealed. Laws 1971, LB 453, § 1.
19-2012. Repealed. Laws 1971, LB 453, § 1.
19-2013. Repealed. Laws 1971, LB 453, § 1.
19-2014. Repealed. Laws 1971, LB 453, § 1.
19-2015. Repealed. Laws 1971, LB 453, § 1.
19-2016. Repealed. Laws 1971, LB 453, § 1.
19-2017. Repealed. Laws 1971, LB 453, § 1.
19-2018. Repealed. Laws 1971, LB 453, § 1.
19-2019. Repealed. Laws 1971, LB 453, § 1.
19-2020. Repealed. Laws 1971, LB 453, § 1.
19-2021. Repealed. Laws 1971, LB 453, § 1.
19-2022. Repealed. Laws 1971, LB 453, § 1.
19-2023. Repealed. Laws 1971, LB 453, § 1.
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19-2001 Repealed. Laws 1971, LB 453, § 1.

19-2002 Repealed. Laws 1971, LB 453, § 1.

19-2003 Repealed. Laws 1971, LB 453, § 1.

19-2004 Repealed. Laws 1971, LB 453, § 1.

19-2005 Repealed. Laws 1971, LB 453, § 1.

19-2006 Repealed. Laws 1971, LB 453, § 1.

19-2007 Repealed. Laws 1971, LB 453, § 1.

19-2008 Repealed. Laws 1971, LB 453, § 1.

19-2009 Repealed. Laws 1971, LB 453, § 1.

19-2010 Repealed. Laws 1971, LB 453, § 1.

19-2011 Repealed. Laws 1971, LB 453, § 1.

19-2012 Repealed. Laws 1971, LB 453, § 1.

19-2013 Repealed. Laws 1971, LB 453, § 1.

19-2014 Repealed. Laws 1971, LB 453, § 1.

19-2015 Repealed. Laws 1971, LB 453, § 1.

19-2016 Repealed. Laws 1971, LB 453, § 1.

19-2017 Repealed. Laws 1971, LB 453, § 1.

19-2018 Repealed. Laws 1971, LB 453, § 1.

19-2019 Repealed. Laws 1971, LB 453, § 1.

19-2020 Repealed. Laws 1971, LB 453, § 1.

19-2021 Repealed. Laws 1971, LB 453, § 1.

19-2022 Repealed. Laws 1971, LB 453, § 1.

19-2023 Repealed. Laws 1971, LB 453, § 1.

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19-2035 Repealed. Laws 1971, LB 453, § 1.

19-2035.01 Repealed. Laws 1971, LB 453, § 1.

19-2036 Repealed. Laws 1971, LB 453, § 1.

19-2037 Repealed. Laws 1971, LB 453, § 1.

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19-2055 Repealed. Laws 1971, LB 453, § 1.

19-2056 Repealed. Laws 1971, LB 453, § 1.

19-2057 Repealed. Laws 1971, LB 453, § 1.

ARTICLE 21

GARBAGE DISPOSAL
(Applicable to cities of the first or second class and villages.)

Section

19-2101 Garbage disposal plants, systems and solid waste disposal areas; construction and maintenance; acquisition; eminent domain.

Cities of the first class, cities of the second class and villages shall have the power to purchase, construct, maintain and improve garbage disposal plants, systems or solid waste disposal areas, and purchase equipment for the operation thereof, for the use of their respective municipalities and the inhabitants thereof, and are hereby authorized and empowered to lease or to take land in fee within their corporate limits or without their corporate limits by donation, gift, devise, purchase or appropriation for rights-of-way and for construction and operation of such a disposal plant, system or solid waste disposal area.

Source: Laws 1947, c. 54, § 1, p. 183; Laws 1961, c. 60, § 1, p. 219; Laws 1969, c. 117, § 1, p. 533.

19-2102 Garbage disposal plants, systems and solid waste disposal areas; tax; when authorized.

The cost thereof may be defrayed by the levy of a tax not to exceed ten and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village in any one year or, when such tax is insufficient for such purpose, by the issuance of bonds of the municipality.

Source: Laws 1947, c. 54, § 2, p. 183; Laws 1953, c. 287, § 37, p. 952; Laws 1979, LB 187, § 83; Laws 1992, LB 719A, § 84.

19-2103 Garbage disposal plants, systems and solid waste disposal areas; issuance of bonds; limitation on amount.

The question of issuing bonds for the purpose herein contemplated shall be submitted to the electors at any election held for that purpose, after not less than thirty days' notice thereof shall have been given by publication in some newspaper published and of general circulation in such municipality or, if no newspaper is published therein, then by posting in five or more public places therein. Such bonds may be issued only when a majority of the electors voting on the question approve their issuance. The bonds shall bear interest payable annually or semiannually, and shall be payable at any time the municipality may determine at the time of their issuance, but in not more than twenty years after their issuance. The aggregate amount of bonds that may be issued for the construction, installation or purchase of a garbage disposal plant, system or solid waste disposal area shall not exceed five percent of the taxable value of the property within such municipality as shown by the last annual assessment.

Source: Laws 1947, c. 54, § 3, p. 183; Laws 1969, c. 117, § 2, p. 534; Laws 1969, c. 51, § 74, p. 321.

19-2104 Garbage disposal plants, systems and solid waste disposal areas; tax levy to pay bonds.

The council or board shall levy annually a sufficient tax to maintain and operate such system, plant or solid waste disposal area and to provide for the payment of the interest on and principal of any bonds that may have been issued as herein provided.

Source: Laws 1947, c. 54, § 4, p. 184; Laws 1969, c. 117, § 3, p. 534.

19-2105 Garbage disposal plants, systems and solid waste disposal areas; contracts.

The council or board of such municipality may also make and enter into a contract or contracts with any person, firm or corporation for the construction, maintenance or operation of a garbage disposal plant, system or solid waste disposal area.

Source: Laws 1947, c. 54, § 5, p. 184; Laws 1969, c. 117, § 4, p. 535.

19-2106 Garbage disposal; management and operation; rates and charges; collections; penalties.

When such system shall have been established, the municipality may provide by ordinance for the management and operation thereof, the rates to be charged for such service, including collection and disposal, the manner of payment and collection thereof and prescribe penalties for the violation of such ordinance, and do whatever is necessary to protect the general health in the matter of removal and disposal of garbage.

Source: Laws 1947, c. 54, § 6, p. 184; Laws 1972, LB 893, § 1.

19-2107 Repealed. Laws 1992, LB 1257, § 105.

19-2108 Repealed. Laws 1981, LB 497, § 1.

19-2109 Repealed. Laws 1981, LB 497, § 1.

19-2110 Repealed. Laws 1981, LB 497, § 1.

19-2111 Garbage disposal; construction of section; existing facilities; zoning.

Nothing in section 19-2101 shall be construed so as to apply to or affect existing garbage disposal facilities or existing county zoning.

Source: Laws 1961, c. 60, § 6, p. 221; Laws 1992, LB 1257, § 66.

19-2112 Repealed. Laws 1992, LB 1257, § 105.

19-2113 Repealed. Laws 1992, LB 1257, § 105.

ARTICLE 22

CORRECTION OF CORPORATE LIMITS
(Applicable to cities of the first or second class and villages.)

Section

19-2201 Error in platting; corporate limits; city council or board of trustees; resolution; contents.

When any part of a city of the first or second class or village shall have been platted (1) the plat having been recorded with the register of deeds of the proper county for more than ten years; (2) the streets and alleys having been dedicated to the public and such city or village having accepted such dedication by maintenance and use of the said streets and alleys, and the inhabitants of that part of such city or village having been subject to taxation including the levy of such city or village and having had the right of franchise in all the elections of such city or village for a period of more than ten years; and (3) such part of such city or village is contiguous and adjacent to such corporate city or village or a properly annexed addition thereto; but, when there is error in the platting thereof or the proceeding to annex the part of such city or village which renders the annexation ineffectual or where there is a total lack of an attempted annexation of record, the council or board of trustees of such city or village may by resolution correct the corporate limits, if adopted by a two-thirds vote of all members of such council or board of trustees. The resolution shall describe the part of such city or village in general terms, direct the proper officers of the city or village to make application to the district court of the county in which such territory lies for the correction and reestablishment of the corporate limits of such city or village. The resolution, and the vote thereon, shall be spread upon the records of the council or board.

Source: Laws 1955, c. 60, § 1, p. 190.

19-2202 Error in platting; application; district court; contents.

The application presented to the district court of the county in which the territory lies shall: (1) Contain a recital of the resolution of the council or board of trustees for correction and reestablishment of the corporate limits and the vote thereon; (2) set forth the name of the plat or plats, the date of record, the book and page of the record book in which such plat or plats have been

recorded, and the book and page of the record in which the original charter and annexations, if any there be, are recorded; (3) describe in general terms the area contained within the corporate limits and the territory affected by the corrections and reestablishment sought; (4) set forth the streets and alleys of such area which are maintained or used; and (5) be supported by exhibits consisting of a certificate of the county treasurer of the county in which the territory lies showing the years for which the real estate and the property therein situated shall have been subject to the tax levy of such city or village and a certificate of the city or village clerk or other officer having custody of the sign-in registers for elections of the city or village in which the territory lies showing the years during which the inhabitants thereof enjoyed the right of franchise in the elections of such city or village. The application shall pray for an order of the district court correcting and reestablishing the corporate limits of the city or village to include such territory.

Source: Laws 1955, c. 60, § 2, p. 190; Laws 1997, LB 764, § 3.

19-2203 Error in platting; application; order to show cause; contents; publication.

If it shall appear to the judge of the district court that such application is properly filed, he or she shall make an order directing all persons owning real estate or having an interest in real estate situated in such part of such city or village, giving the name of the plat as recorded as well as a general description of the territory affected by the proposed correction and reestablishment of corporate limits, to appear before him or her at a time and place to be specified, not less than four and not more than ten weeks from the time of making such order, to show cause why a decree correcting and reestablishing the corporate limits of such city or village should not be entered. The notice of such order to show cause shall be made by publication in a legal newspaper published in such city or village if there is any printed in such city or village and, if there is not, in some legal newspaper printed in the county having general circulation in such city or village. If no legal newspaper is printed in the county, such notice shall be published in a legal newspaper having general circulation in such city or village. The notice shall be published four consecutive weeks in such newspaper and shall contain a summary statement of the object and prayer of the application, mention the court where it is filed, and notify the persons interested when they are required to appear and show cause why such decree should not be entered.

Source: Laws 1955, c. 60, § 3, p. 191; Laws 1986, LB 960, § 15.

19-2204 Error in platting; application; district court; hearing; order; appeal.

If the court finds that the allegations of the application are true and that the conditions set forth in section 19-2201 exist, a decree shall be entered correcting any errors or omissions in the platting and annexation of the territory, reestablishing the corporate limits of the city or village, and barring any future challenge of the validity of the proceedings. A certified copy of the decree shall be recorded in the office of the register of deeds of the county in which the territory lies. Appeals may be taken from the district court to the Court of Appeals as in other civil actions.

Source: Laws 1955, c. 60, § 4, p. 192; Laws 1991, LB 732, § 23.

ARTICLE 23

PARKING METERS
(Applicable to cities of the first or second class and villages.)

Section
19-2301. Parking meters; acquisition, erection, maintenance, operation; ordinance.
19-2302. Revenue; disposition.
19-2303. Terms, defined.
19-2304. Regulation and control of parking vehicles; other means.

19-2301 Parking meters; acquisition, erection, maintenance, operation; ordinance.

The governing body of any city of the first class, city of the second class, or village may enact ordinances providing for the acquisition, establishment, erection, maintenance, and operation of a system of parking meters or other similar mechanical devices requiring a reasonable deposit from those who park vehicles for stipulated periods of time in certain areas of such a city or village in which the congestion of vehicular traffic is such that the public convenience and safety require such regulation.

Source: Laws 1955, c. 61, § 1, p. 193.

First-class city could regulate parking on city street. Vap v. City of McCook, 178 Neb. 844, 136 N.W.2d 220 (1965).

19-2302 Revenue; disposition.

The proceeds derived from the use of the parking meters or other similar mechanical devices, referred to in sections 19-2301 to 19-2304, shall be placed in the traffic and safety fund and shall be used by such a city or village referred to in section 19-2301; first, for the purpose of the acquisition, establishment, erection, maintenance, and operation of the system; second, for the purpose of making the system effective; and third, for the expenses incurred by and throughout such a city or village in the regulation and limitation of vehicular parking, traffic relating to parking, traffic safety devices, signs, signals, markings, policing, lights, traffic surveys, and safety programs.

Source: Laws 1955, c. 61, § 2, p. 193.

19-2303 Terms, defined.

As used in sections 19-2301 to 19-2304, unless the context otherwise requires: Proceeds shall mean any money collected from or by reason of parking meters or other similar mechanical devices installed by any city of the first or second class or village, including revenue received by reason of any schedule of accelerated charges, to be fixed by ordinance. Accelerated charges may include, but need not be limited to, charges fixed by ordinance for parking in controlled or regulated areas without payment in advance of required parking fees or payments, but shall not include judicially imposed fines and penalties.

Source: Laws 1955, c. 61, § 3, p. 193.

19-2304 Regulation and control of parking vehicles; other means.

Nothing contained in sections 19-2301 to 19-2304 shall prohibit the governing body of any city of the first class, city of the second class, or village from employing any and all other ways and means to regulate and control vehicular

parking in such a city or village either in conjunction with a system of meters or devices or exclusive and independent thereof.

Source: Laws 1955, c. 61, § 4, p. 193.

ARTICLE 24

MUNICIPAL IMPROVEMENTS
(Applicable to cities of the first or second class and villages.)

Section

19-2401 Municipal improvements; combination of projects; notice; allocation of cost.

(1) Any city of the first or second class or village when constructing any municipal improvement or public works may combine two or more similar

pending projects although authorized by separate ordinances and located in separate improvement districts for the purpose of advertising for bids for the construction of such projects, and for the further purpose of awarding one contract for the construction of such two or more similar pending projects.

(2) The published notice may set forth the engineer's lump-sum estimate of the total cost for the aggregate of all work to be performed in the combined districts and shall (a) enumerate the estimated quantities of work to be done in each separate district; and (b) call for an aggregate bid on all work to be performed in the combined districts, broken down in such a manner as will accurately reflect unit prices for such estimated quantities, so that, notwithstanding that such a submitted aggregate or alternate aggregate bid may be accepted, the actual cost of the construction of each of such projects may be allocated by any such city or village to the improvement district in which it is located for the purpose of levying any authorized special assessments to defray, in whole or in part, such cost of construction of such projects.

(3) Any such city or village may also request alternate aggregate bids for such projects.

Source: Laws 1957, c. 50, § 1, p. 239; Laws 1963, c. 94, § 1, p. 318; Laws 1969, c. 118, § 1, p. 535.

Notice to affected property owners is not required when a city creates a water district under this section. Purdy v. City of York, 243 Neb. 593, 500 N.W.2d 841 (1993).

19-2402 Water service; sanitary sewer service; extension districts; ordinance; contents.

(1) Whenever the city council of any city of the first or second class or the board of trustees of a village deems it necessary and advisable to extend municipal water service or municipal sanitary sewer service to territory beyond the existing systems, such municipal officials may, by ordinance, create a district or districts to be known as sanitary sewer extension districts or water extension districts for such purposes, and such district or districts may include properties within the corporate limits of the municipality and the extraterritorial zoning jurisdiction as established pursuant to section 16-902 or 17-1002.

(2) The owners of lots and lands abutting upon a street, avenue, or alley, or part thereof, may petition the council or board to create a sanitary sewer extension district or a water extension district. The petition shall be signed by owners representing at least two-thirds of the front footage abutting upon the street, avenue, or alley, or part thereof, within the proposed district, which will become subject to an assessment for the cost of the improvement.

(3) If creation of the district is not initiated by petition, a vote of at least three-fourths of all the members of the council or board shall be required to adopt the ordinance creating the district.

(4) Such ordinance shall state the size and kind of sewer mains or water mains proposed to be constructed in such district and shall designate the location and terminal points thereof. Such ordinance shall also refer to the plans and specifications for such utility extensions which shall have been made and filed with the municipal clerk by the municipal engineer prior to the introduction of the ordinance, and the city or village engineer at the time of filing such plans and specifications shall make and file an estimate of the total cost of the proposed utility extension. The ordinance shall also state the outer

boundaries of the district or districts in which it is proposed to make special assessments.

(5) Upon creation of an extension district, whether by vote of the governing body or by petition, the council or board shall order the sewer extension main or water extension main laid and, to the extent of special benefit, assess the cost thereof against the property which abuts upon the street, avenue, or alley, or part thereof, which is located in the district.

Source: Laws 1961, c. 63, § 1, p. 247; Laws 2001, LB 222, § 3; Laws 2002, LB 649, § 1.

Water extension districts established pursuant to this section must consist of territory beyond the existing municipal water system. Garden Dev. Co. v. City of Hastings, 231 Neb. 477, 436 N.W.2d 832 (1989).

Ordinance creating sanitary sewer extension district was void for failure to state the outer boundaries of the district; either a course or a distance was in error. Christensen v. City of Tekamah, 230 Neb. 576, 432 N.W.2d 798 (1988).

A water extension district is an area of land or contiguous tracts of land located apart and outside and served by an existing municipal water system, wherein water extension mains are to be constructed and service extended. Matzke v. City of Seward, 193 Neb. 211, 226 N.W.2d 340 (1975).

Special assessments are charges imposed by law on land to defray the expense of a local municipal improvement on the theory that the property owner has received special benefits therefrom in excess of the benefits accrued to people generally, and a property owner who attacks a special assessment as void has the burden of establishing its invalidity. Midwest Development Corp. v. City of Norfolk, 192 Neb. 475, 222 N.W.2d 566 (1974).

19-2403 Water service; sanitary sewer service; extension districts; connection compelled; penalty; assessments.

(1) When the extension of the sewer or water service involved in an extension district created pursuant to section 19-2402 is completed, the municipality shall compel all proper connections of occupied properties in the district with the extension and may provide a penalty for failure to comply with regulations of the municipality pertaining to the district.

(2) In case any property owner neglects or fails, for ten days after notice, either by personal service or by publication in some newspaper published and of general circulation in the municipality, to comply with municipal regulations pertaining to municipal water service or municipal sanitary service extensions or to make connections of his or her property with such utility service, the city council or board of trustees may cause the same to be done, assess the cost thereof against the property, and collect the same in the manner provided for the collection of general municipal taxes.

Source: Laws 1961, c. 63, § 2, p. 248; Laws 1969, c. 51, § 75, p. 321; Laws 2002, LB 649, § 2.

19-2404 Sanitary sewer extension mains; water extension mains; assessments; maturity; interest; rate.

(1) Except as provided in subsection (2) of this section, the assessment of special taxes for sanitary sewer extension mains or water extension mains in a district shall be levied at one time and shall become delinquent in equal annual installments over a period of years equal to the number of years for which the bonds for such project were issued pursuant to section 19-2405. The first installment becomes delinquent fifty days after the making of such levy. Subsequent installments become delinquent on the anniversary date of the levy. Each installment, except the first, shall draw interest at the rate set by the city council or board of trustees from the time of such levy until such installment becomes delinquent. After an installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon until such installment is

collected and paid. Such special taxes shall be collected and enforced as in the case of general municipal taxes and shall be a lien on such real estate from and after the date of the levy. If three or more of such installments become delinquent and unpaid on the same property, the city council or the board of trustees may by resolution declare all future installments on such delinquent property to be due on a future fixed date. The resolution shall set forth the description of the property and the name of its record title owner and shall provide that all future installments shall become delinquent upon the date fixed. A copy of such resolution shall be published one time in a legal newspaper of general circulation published in the municipality or, if none is published in such municipality, in a legal newspaper of general circulation in the municipality. After the fixed date such future installments shall be deemed to be delinquent and the municipality may proceed to enforce and collect the total amount due including all future installments.

(2) If the city or village incurs no new indebtedness pursuant to section 19-2405 for any water service extension or sanitary sewer extension in a district, the assessment of special taxes for such improvements shall be levied at one time and shall become delinquent in equal annual installments over such period of years as the city council or board of trustees determines at the time of making the levy to be reasonable and fair.

Source: Laws 1961, c. 63, § 3, p. 249; Laws 1969, c. 51, § 76, p. 322; Laws 1980, LB 655, § 1; Laws 1980, LB 933, § 23; Laws 1981, LB 167, § 24; Laws 1986, LB 960, § 16; Laws 2005, LB 161, § 9.

19-2405 Water service; sanitary sewer service; extension districts; bonds; interest; issuance.

For the purpose of paying the cost of any such water service extension or sanitary sewer service extension, in any such district, the city council or board of trustees may, by ordinance, cause bonds of the municipality to be issued, called district water service extension bonds of district No. .... or district sanitary sewer service extension bonds of district No. ...., payable in not exceeding twenty years from date and to bear interest payable annually or semiannually with interest coupons attached. The ordinance effectuating the issuance of such bonds shall provide that the special tax and assessments shall constitute a sinking fund for the payment of such bonds and interest. If a written protest, signed by owners of the property located in the improvement district and representing a majority of the front footage which may become subject to assessment for the cost of the improvement, is filed with the municipal clerk within three days before the date of the meeting for the consideration of such ordinance, such ordinance shall not be passed. The entire cost of such water extension mains or sanitary sewer extension mains in any such street, avenue, or alley may be chargeable to the private property therein and may be paid by the owner of such property within fifty days from the levy of such special taxes and assessments, and thereupon such property shall be exempt from any lien for the special taxes and assessments. The bonds shall not be sold for less than their par value. If the assessment or any part thereof fails or for any reason is invalid, the governing body of the municipality may, without further notice, make such other and further assessments on the lots and lands as may be required to collect from the lots and lands the cost of the improvement, properly chargeable as provided in this section. In lieu of such general obligation bonds, the municipality may issue revenue bonds as provided

in section 18-502, to pay all or part of the cost of the construction of such improvement.

Source: Laws 1961, c. 63, § 4, p. 249; Laws 1969, c. 51, § 77, p. 323; Laws 2005, LB 161, § 10.

19-2406 Water service; sanitary sewer service; extension districts; warrants; interest; issuance; contractor; interest.

For the purpose of making partial payments as the work progresses, warrants may be issued by the mayor and council or the chairman and board of trustees, as the case may be, upon certificates of the engineer in charge showing the amount of work completed and materials necessarily purchased and delivered for the orderly and proper continuation of the project, in a sum not exceeding ninety-five percent of the cost thereof and upon the completion and acceptance of the work issue a final warrant for the balance due the contractor, which warrants shall be redeemed and paid upon the sale of the bonds issued and sold as provided in section 19-2405, and which shall bear interest at such rate as the mayor and council or chairman and board of trustees, as the case may be, shall order. The city or village shall pay to the contractor interest at the rate of eight percent per annum on the amounts due on partial and final payments beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the governing body, and running until the date that the warrant is tendered to the contractor. Said warrants shall be registered in the manner provided for the registration of other warrants, and called and paid whenever there are funds available for that purpose in the manner provided for the calling and paying of other warrants. For the purpose of paying said warrants and the interest thereon from the time of their registration until paid, the special assessments hereinbefore provided for shall be kept as they are paid and collected in a fund to be designated as the sewer and water service extension fund.

Source: Laws 1961, c. 63, § 5, p. 250; Laws 1969, c. 51, § 78, p. 323; Laws 1974, LB 636, § 7.

19-2407 Water service; sanitary sewer service; extension districts; special taxes; levy; collection.

Special taxes may be levied by the mayor and council or chairman and board of trustees, as the case may be, for the purpose of paying the cost of constructing extension water mains or sanitary service connections, as provided in sections 19-2402 to 19-2407. Such tax shall be levied on the real property lying and being within the utility main district in which such extension mains may be situated to the extent of benefits to such property by reason of such improvement. The benefits to such property shall be determined by the mayor and council, or chairman and board of trustees, as the case may be, sitting as a board of equalization after notice to property owners, as provided in other cases of special assessment. After the mayor and council, or chairman and board of trustees, sitting as such board of equalization, shall find such benefits to be equal and uniform, such levy may be made according to the front footage of the lots or real estate within such utility district, or according to such other rule as the board of equalization may adopt for the distribution or adjustment of such cost upon the lots or real estate in such district benefited by such

improvement. All such taxes shall be collected in the same manner as general municipal taxes and shall be subject to the same penalty.

Source: Laws 1961, c. 63, § 6, p. 250.

19-2408 Combined improvements; legislative intent.

The Legislature finds that it is advantageous to cities of the first class, cities of the second class, and villages and to the inhabitants thereof to authorize such cities and villages to make various street improvements and install water mains and sewer lines as a single project when the aggregate cost of the individual improvement does not exceed fifty thousand dollars and the aggregate cost of all improvements in a single project does not exceed two hundred thousand dollars, in lieu of the cities and villages making such improvements as separate projects.

Source: Laws 1961, c. 64, § 1, p. 252; Laws 2003, LB 52, § 2.

19-2409 Combined improvements; authorized.

Any city of the first class, city of the second class, or village may pave, repave, macadamize, gravel, curb, and gutter streets, avenues, or alleys and do any grading or work incidental in connection therewith and install water mains and sewer lines, either sanitary or storm or a combination sewer, in any improvement district or make any one, or a combination, of the above improvements, as a single project by following the Combined Improvement Act, if the total estimated costs do not exceed the dollar limitations in section 19-2408.

Source: Laws 1961, c. 64, § 2, p. 252; Laws 2003, LB 52, § 3.

19-2410 Combined improvements; petition; contents; authority of governing body.

Whenever a petition, signed by sixty percent of the owners of all real property in the proposed improvement district, is presented to the city council or board of trustees of the village setting forth (1) the property to be included in the improvement district, (2) the improvement or improvements authorized by the Combined Improvement Act which they desire made in such district in reasonable detail and stating the location of each, and (3) an estimate of the cost of the improvement, which estimate does not exceed the dollar limitations in section 19-2408, the city council or board of trustees of the village shall cause the petition to be examined and the estimate of cost of the improvement verified. If the petition is found correct, the city council or board of trustees of the village shall by ordinance create an improvement district consecutively numbered, known as Improvement District No. ....., and cause the improvements to be made if such can be done within such dollar limitations.

Source: Laws 1961, c. 64, § 3, p. 252; Laws 2003, LB 52, § 4.

19-2411 Combined improvements; district; creation; notice; objections.

The city council or board of trustees of a village may without petition create an improvement district and cause one or more of the improvements specified in section 19-2409 to be made in the district. The ordinance shall designate the property included within the district or the outer boundaries thereof, the improvement or improvements to be made in the district, and the total estimated cost of the improvements, which shall not exceed the dollar limita-

tions in section 19-2408. After passage, approval, and publication of the ordinance the city or village clerk shall cause notice of the creation of such district to be published for two consecutive weeks in a newspaper published or of general circulation in the city or village, or in lieu of publication cause such notice to be served personally or by certified mail on all owners of real property located within the district. If a majority of the owners of all the real property in the district file written objections to the creation of the district with the city or village clerk within twenty days after the first publication of such notice or within twenty days after the date of mailing or service of written notice on the property owners in the district, the city or village shall not proceed further and shall repeal such ordinance. If no such objections are filed, the city shall proceed with making the improvements.

Source: Laws 1961, c. 64, § 4, p. 253; Laws 2003, LB 52, § 5.

19-2412 Combined improvements; contract; bids; warrants; payment; interest.

The contract shall be let and the improvements made in the same manner as required for street improvements. The city council or board of trustees of the village may direct the improvements to be made under a single contract or that separate bids be taken for the street improvement, installation of water mains and installation of sewers, but the aggregate of said contracts shall not exceed the estimate as shown in the ordinance creating the district. For the purpose of making partial payment as the work progresses warrants may be issued by the mayor and city council or the board of trustees of the village upon certificate of the engineer in charge showing the amount of the work completed and materials necessarily purchased and delivered for the orderly and proper continuance of the project in an amount not exceeding ninety-five percent of the cost thereof, which warrants shall be redeemed and paid from the amounts received on the special assessments or from the sale of bonds issued to pay the cost of the project as provided in section 19-2414. The city or village shall pay to the contractor interest, at the rate of eight percent per annum on the amounts due on partial and final payments, beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the governing body and running until the date that the warrant is tendered to the contractor.

Source: Laws 1961, c. 64, § 5, p. 254; Laws 1975, LB 112, § 4.

19-2413 Combined improvements; acceptance; special assessments; levy; maturity.

On the completion and acceptance of the improvement or improvements, the mayor and city council or the board of trustees of the village may cause special assessments to be levied against the property in the district specially benefited by the improvement or improvements to the extent that said property is specially benefited in the manner and form provided for levying special assessments for street improvements under the provisions of sections 17-509 to 17-515, and the special assessments shall mature and bear interest the same as provided for special assessments for paving.

Source: Laws 1961, c. 64, § 6, p. 254.

19-2414 Combined improvements; acceptance; bonds; interest; issuance; maturity; proceeds; disposition.

After the completion and acceptance of the improvement or improvements, the city or village may issue and sell its negotiable coupon bonds to be known as public improvement bonds in an amount not exceeding the balance of the unpaid cost of the improvement or improvements. The bonds shall be payable in not to exceed twenty years from date and bear interest payable annually or semiannually. All money collected from the special assessments shall be placed in a sinking fund to pay the cost of the improvement or improvements and the bonds issued under the Combined Improvement Act.

Source: Laws 1961, c. 64, § 7, p. 254; Laws 1969, c. 51, § 79, p. 324; Laws 2003, LB 52, § 6.

19-2415 Combined improvements; act, how cited.

Sections 19-2408 to 19-2415 shall be known and may be cited as the Combined Improvement Act.

Source: Laws 1961, c. 64, § 9, p. 255; Laws 2003, LB 52, § 7.

19-2416 Limited street improvement district; creation; purpose; ordinance; notice; procedure.

The governing body of any city of the first or second class or of any village may by ordinance create a limited street improvement district for the sole purpose of grading, curbing and guttering any unpaved street or streets or curbing and guttering any paved or unpaved street or streets in the city or village and each district shall be designated as Street Grading, Curbing and Guttering District No. ..... or as Curbing and Guttering District No. ...., as the case may be. The mayor or chairman of the board of trustees and clerk shall, after the passage, approval and publication of such ordinance, publish notice of the creation of any such district or districts one time each week for three weeks in a daily or weekly newspaper of general circulation in the city or village. After the passage, approval and publication of such ordinance and the publication of such notice, the procedure of the mayor and council or chairman and board of trustees in reference to such improvement shall be in accordance with the applicable provisions of sections 16-620 to 16-655 or 17-508 to 17-520.

Source: Laws 1961, c. 65, § 1, p. 255; Laws 1963, c. 89, § 8, p. 306; Laws 1965, c. 56, § 2, p. 263.

19-2417 Sidewalks; construct, replace, repair; districts; contract.

The mayor and council of any city of the first class or second class or the board of trustees of any village shall have the power to construct, replace, repair, or otherwise improve sidewalks within such city or village. Whenever the mayor and council of a city or board of trustees of a village shall by resolution passed by a three-fourths vote of all members of such council or board of trustees determine the necessity for sidewalk improvements, the mayor and council or board of trustees shall by ordinance create a sidewalk district, and shall cause such improvements to be made, and shall contract therefor.

Source: Laws 1965, c. 80, § 1, p. 316.

19-2418 Sidewalks; construct, replace, repair; districts; assessments; payment.

The mayor and council or board of trustees shall levy assessments on the lots and parcels of land abutting on or adjacent to the sidewalk improvements especially benefited thereby in such district in proportion to the benefits, to pay the cost of such improvement. All assessments shall be a lien on the property on which levied from the date of the levy until paid. The assessment of the special tax, for the sidewalk improvement, shall be levied at one time and shall become delinquent as follows: One-seventh of the total assessment shall become delinquent in ten days after such levy; one-seventh in one year; one-seventh in two years; one-seventh in three years; one-seventh in four years; one-seventh in five years; and one-seventh in six years. Each of such installments, except the first, shall draw interest at the rate of not exceeding the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of the levy until the same shall become delinquent; and after the same shall become delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon as in the case of other special taxes. All such assessments shall be made and collected in accordance with the procedure established for paving assessments for the particular city or village.

Source: Laws 1965, c. 80, § 2, p. 316; Laws 1980, LB 933, § 24; Laws 1981, LB 167, § 25.

19-2419 Sidewalks; construct, replace, repair; districts; bonds; general obligation; interest; payment.

For the purpose of paying the cost of sidewalk improvements in any sidewalk district, the mayor and council or board of trustees shall have the power and may, by ordinance, cause to be issued bonds of the city or village, to be called Sidewalk Bonds of District No. ...., payable in not exceeding six years from date, and to bear interest annually or semiannually, with interest coupons attached. Such bonds shall be general obligations of the city or village, with principal and interest payable from a fund made up of the special assessments collected and supplemented by transfers from the general fund to make up any deficiency in the collection of the special assessments. For the purpose of making partial payments as the work progresses, warrants bearing interest may be issued by the mayor and council, or the board of trustees, upon certificate of the engineer in charge showing the amount of the work completed and materials necessarily purchased and delivered for the orderly and proper continuance of the project, in a sum not exceeding ninety-five percent of the cost thereof, which warrants shall be redeemed and paid upon the sale of the bonds issued and sold as aforesaid. The city or village shall pay to the contractor interest, at the rate of eight percent per annum on the amounts due on partial and final payments, beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the governing body and running until the date that the warrant is tendered to the contractor.

Source: Laws 1965, c. 80, § 3, p. 317; Laws 1969, c. 51, § 80, p. 324; Laws 1975, LB 112, § 5.

19-2420 Sewage and water facilities; acquire by gift or purchase from federal government; rates.

A city of the first or second class may acquire by gift or purchase from the federal government or any agency thereof sewer lines and sewage disposal systems, waterworks, and water distribution systems, whether within or without the corporate limits, and operate and extend the same, even though such system or systems are or may be and continue to be wholly disconnected and separate from any such utility system already belonging to such city, when, in the judgment of the mayor and council of such a city not having a board of public works or of its board of public works in such a city having such board, it is beneficial to any such city to do so. For the purpose of acquiring, maintaining, operating, and extending any such system any such city of the first or second class may use funds from any sewer, water or electrical system presently owned and operated by it, without prior appropriation of such funds, and any other funds lawfully available for such purpose.

Rates charged for the use of any system or works so acquired shall be reasonable and based on cost properly allocable to the customers of any such system.

Source: Laws 1967, c. 88, § 1, p. 277.

19-2421 Leases authorized; term; option to purchase.

The mayor and council of any city of the first or second class and the chairman and board of trustees of any village, in addition to other powers granted by law, may enter into contracts for lease of real or personal property for any purpose for which the city or village is authorized by law to purchase property or construct improvements. Such leases shall not be restricted to a single year, and may provide for the purchase of the property in installment payments.

Source: Laws 1969, c. 110, § 1, p. 518.

19-2422 Special assessment; appeal; district court; powers; tried de novo.

Any owner of real property who feels aggrieved by the levy of any special assessment by any city of the first or second class or village may appeal from such assessment, both as to the validity and amount thereof, to the district court of the county where such assessed real property is located. The issues on such appeal shall be tried de novo. The district court may affirm, modify, or vacate the special assessment, or may remand the case to the local board of equalization for rehearing.

Source: Laws 1975, LB 468, § 1.

This section provides a taxpayer with a means by which his or her constitutional challenges to a special tax assessment can be fairly and fully adjudicated. Francis v. City of Columbus, 267 Neb. 553, 676 N.W.2d 346 (2004).

Plaintiffs did not waive their right to contest the assessment for a sanitary sewer extension district by failing to file notice of appeal within 10 days of the levy. Plaintiffs attacked the formation of the district, not the amount of assessments that have been levied against their property. A special assessment is subject to collateral attack for a fundamental defect. Christensen v. City of Tekamah, 230 Neb. 576, 432 N.W.2d 798 (1988).

A landowner's right to challenge the validity and amount of a special assessment pursuant to this section is not waived when such landowner attains a deferral of payment of the assessment, pursuant to sections 19-2425 to 19-2431. Brown v. City of York, 227 Neb. 183, 416 N.W.2d 574 (1987).

19-2423 Special assessment; notice of appeal; time; bond; costs.

The owner appealing shall, within ten days from the levy of such special assessment, file a notice of appeal with the city or village clerk, and shall post a bond in the amount of two hundred dollars conditioned that such appeal shall be prosecuted without delay and the appellant shall pay all costs charged against him.

Source: Laws 1975, LB 468, § 2.

Plaintiffs did not waive their right to contest the assessment for a sanitary sewer extension district by failing to file notice of appeal within 10 days of the levy. Plaintiffs attacked the formation of the district, not the amount of assessments that have been levied against their property. A special assessment is subject to collateral attack for a fundamental defect. Christensen v. City of Tekamah, 230 Neb. 576, 432 N.W.2d 798 (1988).

19-2424 City or village clerk; prepare transcript; cost.

It shall be the duty of the city or village clerk, on tender or payment to him of the cost of preparing the transcript at the rate of ten cents per one hundred words, to prepare a complete transcript of the proceedings before such city or village.

Source: Laws 1975, LB 468, § 3.

19-2425 Special assessment; file petition on appeal and transcript with district court; time.

The appellant shall file his petition on appeal in the district court, together with a transcript of the proceedings before such city or village, within thirty days from the date of the levy of such special assessment.

Source: Laws 1975, LB 468, § 4.

A landowner's right to challenge the validity and amount of a special assessment pursuant to section 19-2422 is not waived when such landowner attains a deferral of payment of the assessment, pursuant to sections 19-2425 to 19-2431. Brown v. City of York, 227 Neb. 183, 416 N.W.2d 574 (1987).

19-2426 Irrigation or drainage ditch, canal, or lateral; wall, enclose, or cover; procedure.

Any first- or second-class city or village may wall, enclose, or cover in a manner that will not restrict or impair the intended purpose, function, or operation of a segment of any irrigation or drainage ditch, canal, or lateral, whether on public or private property, which lies within the corporate limits of such city or village, and for this purpose may acquire and hold land or an interest in land. Nothing in this section shall be construed to authorize the taking of property without payment of compensation when required by law. Such city or village may undertake and finance a project authorized by this section either independently or jointly with any person owning or operating such irrigation ditch, canal, or lateral; *Provided*, that if such project is undertaken independently, the owner or operator of such irrigation ditch, canal, or lateral shall approve the design of the project prior to any construction.

Source: Laws 1979, LB 13, § 1.

19-2427 Improvement district; adjacent land; how treated; assessments.

Supplemental to any existing law on the subject, any first- or second-class city or village may include land adjacent to such city or village when creating an improvement district, such as a sewer, paving, water, water extension, or sanitary sewer extension district. The city council or board of trustees shall have power to assess, to the extent of special benefits, the costs of such improvements upon the properties found especially benefited thereby, except as provided in sections 19-2428 to 19-2431.

Source: Laws 1979, LB 136, § 4; Laws 1983, LB 94, § 4; Laws 1987, LB 679, § 1.

19-2428 Improvement district; land within agricultural use zone; how treated.

(1) Whenever the governing body of a city of the first or second class or village creates an improvement district as specified in section 19-2427 which includes land adjacent to such city or village and such adjacent land is within an agricultural use zone and is used exclusively for agricultural use, the owners of record title of such adjacent land may apply for a deferral from special assessments pursuant to sections 19-2428 to 19-2431.

(2) For purposes of sections 19-2428 to 19-2431:

(a) Agricultural use means the use of land as described in section 77-1359, so that incidental use of the land for nonagricultural or nonhorticultural purposes shall not disqualify the land; and

(b) Agricultural use zone means designation of any land predominantly for agricultural or horticultural use by any political subdivision pursuant to sections 19-924 to 19-933, Chapter 14, article 4, Chapter 15, article 9, Chapter 16, article 9, Chapter 17, article 10, or Chapter 23, article 1. The primary objective of the agricultural use zoning shall be to preserve and protect agricultural activities and the potential for the agricultural, horticultural, or open use of land. Uses to be allowed on such lands include primarily agricultural-related or horticultural-related uses, and nonagricultural or nonhorticultural industrial, commercial, or residential uses allowed on such lands shall be restricted so that they do not conflict with or detract from this objective.

Source: Laws 1983, LB 94, § 5; Laws 1987, LB 679, § 2; Laws 2006, LB 808, § 5.

19-2429 Agricultural land within improvement district; deferral of special assessment; procedure.

(1) Any owner of record title eligible for the deferral granted by section 19-2428 shall, to secure such assessment, make application to the city council or board of trustees of any city of the first or second class or village within ninety days after creation of an improvement district as specified in section 19-2427 which includes land adjacent to such city or village which is within an agricultural use zone and is used exclusively for agricultural use.

(2) Any owner of record title who makes application for the deferral provided by sections 19-2428 to 19-2431 shall notify the county register of deeds of such application in writing prior to approval by the city council or board of trustees.

(3) The city council or board of trustees shall approve the application of any owner of record title upon determination that the property (a) is within an agricultural use zone and is used exclusively for agricultural use and (b) the owner has complied with subsection (2) of this section.

Source: Laws 1983, LB 94, § 6; Laws 1987, LB 679, § 3.

19-2430 Agricultural land within improvement district; deferral of special assessment; termination; when.

The deferral provided for in sections 19-2428 to 19-2431 shall be terminated upon any of the following events:

(1) Notification by the owner of record title to the city council or board of trustees to remove such deferral;

(2) Sale or transfer to a new owner who does not make a new application within sixty days of the sale or transfer, except as provided in subdivision (3) of this section;

(3) Transfer by reason of death of a former owner to a new owner who does not make application within one hundred twenty-five days of the transfer;

(4) The land is no longer being used as agricultural land; or

(5) Change of zoning to other than an agricultural zone.

Source: Laws 1983, LB 94, § 7.

19-2431 Agricultural land within improvement district; payment of special assessments; when; interest; lien.

(1) Whenever property which has received a deferral pursuant to sections 19-2428 to 19-2431 becomes disqualified for such deferral, the owner of record title of such property shall pay to the city or village an amount equal to the total amount of special assessments which would have been assessed against such property, to the extent of special benefits, had such deferral not been granted. Interest upon the special assessments shall be deferred and shall accrue from the time the property becomes disqualified for deferral. The interest rate shall be the same as was charged to other property owners within the special assessment district in question and amortized over a term to coincide with the original amortization period.

(2) In cases where the deferral provided by sections 19-2428 to 19-2431 is terminated as a result of a sale or transfer described in subdivision (2) or (3) of section 19-2430, the lien for assessments and interest shall attach as of the day preceding such sale or transfer.

Source: Laws 1983, LB 94, § 8; Laws 1989, LB 106, § 1.

ARTICLE 25

INDUSTRIAL AREAS

Section

19-2501.	Transferred to section 13-1111.
19-2501.01.	Transferred to section 13-1112.
19-2502.	Transferred to section 13-1113.
19-2503.	Transferred to section 13-1114.
19-2504.	Transferred to section 13-1115.
19-2505.	Transferred to section 13-1116.
19-2506.	Transferred to section 13-1118.
19-2507.	Transferred to section 13-1117.
19-2508.	Repealed. Laws 1979, LB 217, § 9.
19-2509.	Transferred to section 13-1119.
19-2510.	Transferred to section 13-1120.
19-2511.	Transferred to section 13-1121.

19-2501 Transferred to section 13-1111.

19-2501.01 Transferred to section 13-1112.

19-2502 Transferred to section 13-1113.

19-2503 Transferred to section 13-1114.

19-2504 Transferred to section 13-1115.

19-2505 Transferred to section 13-1116.

19-2506 Transferred to section 13-1118.

19-2507 Transferred to section 13-1117.

19-2508 Repealed. Laws 1979, LB 217, § 9.

19-2509 Transferred to section 13-1119.

19-2510 Transferred to section 13-1120.

19-2511 Transferred to section 13-1121.

ARTICLE 26
URBAN REDEVELOPMENT

Section
19-2601. Transferred to section 18-2101.
19-2602. Transferred to section 18-2102.
19-2602.01. Transferred to section 18-2102.01.
19-2603. Transferred to section 18-2103.
19-2604. Transferred to section 18-2104.
19-2605. Transferred to section 18-2105.
19-2606. Transferred to section 18-2106.
19-2607. Transferred to section 18-2107.
19-2608. Transferred to section 18-2108.
19-2609. Transferred to section 18-2109.
19-2610. Transferred to section 18-2110.
19-2611. Transferred to section 18-2111.
19-2612. Transferred to section 18-2112.
19-2613. Transferred to section 18-2113.
19-2614. Transferred to section 18-2114.
19-2615. Transferred to section 18-2115.
19-2616. Transferred to section 18-2116.
19-2617. Transferred to section 18-2117.
19-2618. Transferred to section 18-2118.
19-2619. Transferred to section 18-2119.
19-2620. Transferred to section 18-2120.
19-2621. Transferred to section 18-2121.
19-2622. Transferred to section 18-2122.
19-2623. Transferred to section 18-2123.
19-2624. Transferred to section 18-2124.
19-2625. Transferred to section 18-2125.
19-2626. Transferred to section 18-2126.
19-2627. Transferred to section 18-2127.
19-2628. Transferred to section 18-2128.
19-2629. Transferred to section 18-2129.
19-2630. Transferred to section 18-2130.
19-2631. Transferred to section 18-2131.
19-2632. Transferred to section 18-2132.
19-2633. Transferred to section 18-2133.
19-2634. Transferred to section 18-2134.
19-2635. Transferred to section 18-2135.
19-2636. Transferred to section 18-2136.
19-2637. Transferred to section 18-2137.
19-2638. Transferred to section 18-2138.
19-2639. Transferred to section 18-2139.
19-2640. Transferred to section 18-2140.
19-2641. Transferred to section 18-2141.
19-2642. Transferred to section 18-2142.
19-2643. Transferred to section 18-2143.
19-2644. Transferred to section 18-2144.

19-2601 Transferred to section 18-2101.

19-2602 Transferred to section 18-2102.

19-2602.01 Transferred to section 18-2102.01.

19-2603 Transferred to section 18-2103.

19-2604 Transferred to section 18-2104.

19-2605 Transferred to section 18-2105.

19-2606 Transferred to section 18-2106.

19-2607 Transferred to section 18-2107.

19-2608 Transferred to section 18-2108.

19-2609 Transferred to section 18-2109.

19-2610 Transferred to section 18-2110.

19-2611 Transferred to section 18-2111.

19-2612 Transferred to section 18-2112.

19-2613 Transferred to section 18-2113.

19-2614 Transferred to section 18-2114.

19-2615 Transferred to section 18-2115.

19-2616 Transferred to section 18-2116.

19-2617 Transferred to section 18-2117.

19-2618 Transferred to section 18-2118.

19-2619 Transferred to section 18-2119.

19-2620 Transferred to section 18-2120.

19-2621 Transferred to section 18-2121.

19-2622 Transferred to section 18-2122.

19-2623 Transferred to section 18-2123.

19-2624 Transferred to section 18-2124.

19-2625 Transferred to section 18-2125.

19-2626 Transferred to section 18-2126.

19-2627 Transferred to section 18-2127.

19-2628 Transferred to section 18-2128.

19-2629 Transferred to section 18-2129.

19-2630 Transferred to section 18-2130.

19-2631 Transferred to section 18-2131.

19-2632 Transferred to section 18-2132.

19-2633 Transferred to section 18-2133.

19-2634 Transferred to section 18-2134.

19-2635 Transferred to section 18-2135.

19-2636 Transferred to section 18-2136.

19-2637 Transferred to section 18-2137.

19-2638 Transferred to section 18-2138.

19-2639 Transferred to section 18-2139.

19-2640 Transferred to section 18-2140.

19-2641 Transferred to section 18-2141.

19-2642 Transferred to section 18-2142.

19-2643 Transferred to section 18-2143.

19-2644 Transferred to section 18-2144.

ARTICLE 27
PUBLIC UTILITY SERVICE

(a) CONTRACTS
(Applicable to cities of the first or second class.)

Section
19-2701. Public utilities; service outside city; authorization; limitation on length of contracts.

(b) DISCONTINUANCE OF SERVICE
(Applicable to all cities.)

19-2702. Transferred to section 70-1605.
19-2703. Transferred to section 70-1602.
19-2704. Transferred to section 70-1606.
19-2705. Transferred to section 70-1607.
19-2706. Transferred to section 70-1608.
19-2707. Repealed. Laws 1988, LB 792, § 16.
19-2708. Transferred to section 70-1609.
19-2709. Transferred to section 70-1610.
19-2710. Transferred to section 70-1611.
19-2711. Transferred to section 70-1612.
19-2712. Repealed. Laws 1988, LB 792, § 16.
19-2713. Transferred to section 70-1613.
19-2714. Transferred to section 70-1614.
19-2715. Transferred to section 70-1615.

(c) DISCONTINUANCE OF SERVICE
(Applicable to all villages.)

19-2716. Transferred to section 70-1603.
19-2717. Transferred to section 70-1604.

(a) CONTRACTS
(Applicable to cities of the first or second class.)

19-2701 Public utilities; service outside city; authorization; limitation on length of contracts.

A city of the first or second class may enter into a contract or contracts to sell electric, water, or sewer service to persons beyond the corporate limits of such

a city when, in the judgment of the mayor and council of such a city not having a board of public works or of its board of public works in such a city having such board, it is beneficial to any such city to do so. No such contract shall run for a period in excess of twenty-five years. Such a city is hereby authorized and empowered to enter into contracts for the furnishing of electric service to persons, firms, associations, and corporations beyond the corporate limits of such a city.

Source: Laws 1909, c. 19, § 1, p. 186; R.S.1913, §§ 4959, 4960; C.S.1922, §§ 4128, 4129; Laws 1929, c. 43, § 2, p. 188; C.S.1929, §§ 16-657, 16-658; R.S.1943, § 16-685; Laws 1947, c. 26, § 4, p. 130; R.R.S.1943, § 16-685; Laws 1957, c. 53, § 1, p. 262.

City was given power to contract for the sale of water outside the city limits. Burger v. City of Beatrice, 181 Neb. 213, 147 N.W.2d 784 (1967).

The provisions of this section were modified by legislative act creating the Nebraska Power Review Board. City of Auburn v. Eastern Nebraska Public Power Dist., 179 Neb. 439, 138 N.W.2d 629 (1965).

(b) DISCONTINUANCE OF SERVICE
(Applicable to all cities.)

19-2702 Transferred to section 70-1605.

19-2703 Transferred to section 70-1602.

19-2704 Transferred to section 70-1606.

19-2705 Transferred to section 70-1607.

19-2706 Transferred to section 70-1608.

19-2707 Repealed. Laws 1988, LB 792, § 16.

19-2708 Transferred to section 70-1609.

19-2709 Transferred to section 70-1610.

19-2710 Transferred to section 70-1611.

19-2711 Transferred to section 70-1612.

19-2712 Repealed. Laws 1988, LB 792, § 16.

19-2713 Transferred to section 70-1613.

19-2714 Transferred to section 70-1614.

19-2715 Transferred to section 70-1615.

(c) DISCONTINUANCE OF SERVICE
(Applicable to all villages.)

19-2716 Transferred to section 70-1603.

19-2717 Transferred to section 70-1604.

ARTICLE 28

WIRED TELEVISION AND RADIO SYSTEMS

Section
19-2801. Repealed. Laws 1969, c. 119, § 6.
19-2802. Repealed. Laws 1969, c. 119, § 6.
19-2803. Repealed. Laws 1969, c. 119, § 6.
19-2804. Repealed. Laws 1969, c. 119, § 6.

19-2801 Repealed. Laws 1969, c. 119, § 6.

19-2802 Repealed. Laws 1969, c. 119, § 6.

19-2803 Repealed. Laws 1969, c. 119, § 6.

19-2804 Repealed. Laws 1969, c. 119, § 6.

ARTICLE 29

NEBRASKA MUNICIPAL AUDITING LAW
(Applicable to cities of the first or second class and villages.)

Section
19-2901. Act, how cited.
19-2902. Terms, defined.
19-2903. Annual audit; independent accountant; when completed and reported; villages, waiver; public utility or other enterprise; separate audit and account.
19-2904. Annual audit; contents.
19-2905. Annual audit report; supplemental report; copies; filing; public records; retain for five years.
19-2906. Accountant; prohibited disclosures; penalty.
19-2907. Annual audit; failure or refusal of municipality; mandamus; damages; notice; State Treasurer; withhold distribution of funds.
19-2908. Sections, how construed; failure to comply, effect on taxes levied.
19-2909. Audit; expense; payment.

19-2901 Act, how cited.

Sections 19-2901 to 19-2909 may be cited as the Nebraska Municipal Auditing Law.

Source: Laws 1959, c. 69, § 1, p. 296.

19-2902 Terms, defined.

For purposes of the Nebraska Municipal Auditing Law, unless the context otherwise requires:

(1) Municipality or municipalities shall mean and include all incorporated cities of the first class, cities of the second class, and villages in this state;

(2) Municipal authority shall mean the city council, board of trustees of a village, or any other body or officer having authority to levy taxes, make appropriations, or approve claims for any municipality;

(3) Accountant shall mean a duly licensed public accountant or certified public accountant who otherwise is not an employee of or connected in any way with the municipality involved;

(4) Annual audit report shall mean the written report of the accountant and all appended statements and schedules relating thereto presenting or recording the findings of an examination or audit of the financial transactions, affairs, or financial condition of a municipality and its proprietary functions for the fiscal year immediately prior to the making of such annual report; and

(5) Fiscal year shall mean the fiscal year for the particular municipality involved or the fiscal year established in section 18-2804 for a proprietary function if different than the municipal fiscal year.

Source: Laws 1959, c. 69, § 2, p. 296; Laws 1993, LB 734, § 29.

19-2903 Annual audit; independent accountant; when completed and reported; villages, waiver; public utility or other enterprise; separate audit and account.

The municipal authorities of each municipality shall cause an audit of the municipality's accounts to be made by a recognized independent and qualified accountant as expeditiously as possible following the close of the fiscal year for such municipality and to cover all financial transactions and affairs of the municipality for such preceding fiscal year. Such audit shall be made on a cash or accrual method at the discretion of the municipality. Such audit shall be completed and the annual audit report made by such accountant shall be submitted within six months after the close of the fiscal year in any event, unless an extension of time shall be granted by a written resolution adopted by the municipal authorities. A village may request a waiver of the audit requirement subject to the requirements of subdivision (4) of section 84-304. If a municipality other than a village owns or operates any type of public utility or other enterprise which substantially generates its own revenue, that phase of the affairs of such municipality shall be audited separately from the other functions of such municipality and the result shall appear separately in the annual audit report made by the accountant to the municipality and such audit shall be on an accrual basis and shall contain statements and materials which conform to generally accepted accounting principles. Any municipality, other than a village, operating its utilities through a board of public works may provide for an entirely separate audit, on an accrual basis, of such operations and report and by a different accountant than the one making the general audit. A village which is required to conduct an audit under subdivision (4) of section 84-304 and which owns or operates any type of public utility or other enterprise which substantially generates its own revenue shall have that phase of the village's affairs reported separately from the other functions of such village, the result of the audit shall appear separately in the annual audit report made by the accountant to the village, and the audit shall be on a cash or accrual basis at the discretion of the village.

Source: Laws 1959, c. 69, § 3, p. 296; Laws 1971, LB 682, § 1; Laws 1975, LB 446, § 3; Laws 1976, LB 776, § 1; Laws 1977, LB 152, § 1; Laws 2002, LB 568, § 6.

19-2904 Annual audit; contents.

The annual audit report shall set forth, insofar as possible, the financial position and results of financial operations for each fund or group of accounts of the municipality. When the accrual method is selected for the annual audit report, such report shall be in accordance with generally accepted accounting

principles. The annual audit report shall also include the professional opinion of the accountant with respect to the financial statements, or, if an opinion cannot be expressed, a declaration that the accountant is unable to express such an opinion with an explanation of the reasons why he cannot do so.

Source: Laws 1959, c. 69, § 4, p. 297; Laws 1977, LB 152, § 2.

19-2905 Annual audit report; supplemental report; copies; filing; public records; retain for five years.

At least three copies of such annual audit report shall be properly signed and attested by the accountant; two copies shall be filed with the clerk of the municipality involved and one copy shall be filed with the Auditor of Public Accounts. The copy of the annual audit report submitted to the Auditor of Public Accounts shall be accompanied by a supplemental report, if appropriate, by the accountant making the audit identifying any illegal acts or indications of illegal acts discovered as a result of the audit.

The annual audit report filed, together with any accompanying comment or explanation, shall become a part of the public records of the clerk of the municipality involved and shall at all times thereafter be open and subject to public inspection. The copies filed with the auditor shall be kept as a part of the public records in that office for at least five years and shall at all times be subject to public inspection.

Source: Laws 1959, c. 69, § 5, p. 297; Laws 1969, c. 93, § 2, p. 459; Laws 1975, LB 446, § 4; Laws 1992, LB 1115, § 1; Laws 2002, LB 568, § 7.

19-2906 Accountant; prohibited disclosures; penalty.

It shall be unlawful for an accountant making any municipal audit to make any disclosure of the result of any examination of any municipal account except in the report to the municipality audited. Any violation of this section shall constitute a Class III misdemeanor, and upon conviction thereof, the offender shall be ordered to pay the costs of prosecution. This section shall not apply to an accountant reporting illegal acts or indications of illegal acts found during a municipal audit to an appropriate law enforcement official or governmental oversight body.

Source: Laws 1959, c. 69, § 6, p. 297; Laws 1992, LB 1115, § 2.

19-2907 Annual audit; failure or refusal of municipality; mandamus; damages; notice; State Treasurer; withhold distribution of funds.

Should any municipality fail or refuse 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, then and in such event, any resident taxpayer may make a written demand on the governing body of such municipality to commence such annual audit within thirty days, and if such demand is ignored, a mandamus action may be instituted by any taxpayer or taxpayers residing in such municipality against the then municipal authorities of such municipality requiring the municipality to proceed forthwith to cause such audit to be made, and if such action is decided in favor of the taxpayer or taxpayers instituting the same, the then municipal authorities of such municipality shall be personally, and jointly and severally, liable for the costs of such action, including a reasonable attorney fee to be allowed by the

court for the attorney employed by the taxpayer or taxpayers and who prosecuted the action. Upon a failure, refusal, or neglect to cause such annual audit to be made as required by sections 19-2903 and 19-2904, and a failure to file a copy thereof with the Auditor of Public Accounts as required by section 19-2905, the Auditor of Public Accounts shall, after due notice and a hearing to show cause by such city or village, notify the State Treasurer of such failure to file a copy with the Auditor of Public Accounts. The State Treasurer shall, upon receipt of such notice, withhold distribution of all money to which such city or village may be entitled under the provisions of sections 39-2511 to 39-2520, until such annual audit shall have been made and have been filed with the Auditor of Public Accounts. If such annual audit is not filed within a period of six months from the time of the order and notice of delinquency given by the Auditor of Public Accounts to the State Treasurer, the amount so withheld shall be distributed to the other cities and villages in the county where such delinquent city is located. Upon compliance with the law requiring annual audits, the delinquent city or village shall again become entitled to distribution of all money to which it is entitled from the State Treasurer beginning with the date of such compliance.

Source: Laws 1959, c. 69, § 7, p. 298; Laws 1969, c. 93, § 3, p. 460.

19-2908 Sections, how construed; failure to comply, effect on taxes levied.

The provisions of sections 19-2901 to 19-2909 shall not be construed to relieve any officer of any duties now required by law of him with relation to public accounts of a municipality or the disbursement of public funds of the same. Failure of the municipality to comply with any provisions of sections 19-2901 to 19-2909 shall not affect the legality of taxes levied for any of the funds of such municipality or any special assessments levied in connection with public improvements.

Source: Laws 1959, c. 69, § 8, p. 298.

19-2909 Audit; expense; payment.

The expenses of the audit required in sections 19-2901 to 19-2909 shall be paid by the municipal authorities of the municipality involved from appropriate municipal funds; *Provided,* that if any municipality has completed its annual budget and passed its appropriation ordinance before March 30, 1959, then such expenses may be paid from the general fund of such municipality for the first annual audit made under the provisions of sections 19-2901 to 19-2909.

Source: Laws 1959, c. 69, § 9, p. 298.

ARTICLE 30

MUNICIPAL ELECTIONS

(Applicable to cities of the first or second class and villages.)

Section
19-3001. Repealed. Laws 2004, LB 927, § 3.
19-3002. Repealed. Laws 2004, LB 927, § 3.
19-3003. Repealed. Laws 2004, LB 927, § 3.
19-3004. Repealed. Laws 1974, LB 897, § 15.
19-3005. Repealed. Laws 2004, LB 927, § 3.
19-3006. Repealed. Laws 2004, LB 927, § 3.
19-3007. Repealed. Laws 1969, c. 257, § 44.
19-3007.01. Repealed. Laws 2004, LB 927, § 3.

Section

19-3001 Repealed. Laws 2004, LB 927, § 3.

19-3002 Repealed. Laws 2004, LB 927, § 3.

19-3003 Repealed. Laws 2004, LB 927, § 3.

19-3004 Repealed. Laws 1974, LB 897, § 15.

19-3005 Repealed. Laws 2004, LB 927, § 3.

19-3006 Repealed. Laws 2004, LB 927, § 3.

19-3007 Repealed. Laws 1969, c. 257, § 44.

19-3007.01 Repealed. Laws 2004, LB 927, § 3.

19-3008 Repealed. Laws 1969, c. 257, § 44.

19-3009 Repealed. Laws 1969, c. 257, § 44.

19-3010 Repealed. Laws 1969, c. 257, § 44.

19-3011 Repealed. Laws 2004, LB 927, § 3.

19-3012 Repealed. Laws 2004, LB 927, § 3.

19-3013 Repealed. Laws 2004, LB 927, § 3.

19-3014 Repealed. Laws 2004, LB 927, § 3.

19-3015 Repealed. Laws 2004, LB 927, § 3.

19-3016 Repealed. Laws 2004, LB 927, § 3.

19-3017 Repealed. Laws 2004, LB 927, § 3.

19-3018 Repealed. Laws 2004, LB 927, § 3.

19-3019 Repealed. Laws 2004, LB 927, § 3.

19-3020 Repealed. Laws 2004, LB 927, § 3.

19-3021 Repealed. Laws 2004, LB 927, § 3.

19-3022 Repealed. Laws 2004, LB 927, § 3.

19-3023 Repealed. Laws 2004, LB 927, § 3.

19-3024 Repealed. Laws 2004, LB 927, § 3.

19-3025 Repealed. Laws 2004, LB 927, § 3.

19-3026 Repealed. Laws 2004, LB 927, § 3.

19-3027 Repealed. Laws 2004, LB 927, § 3.

19-3028 Repealed. Laws 2004, LB 927, § 3.

19-3029 Repealed. Laws 2004, LB 927, § 3.

19-3030 Repealed. Laws 2004, LB 927, § 3.

19-3031 Repealed. Laws 2004, LB 927, § 3.

19-3032 Repealed. Laws 2004, LB 927, § 3.

19-3033 Repealed. Laws 1975, LB 453, § 16.

19-3034 Repealed. Laws 2004, LB 927, § 3.

19-3035 Repealed. Laws 1973, LB 561, § 11.

19-3036 Repealed. Laws 1973, LB 561, § 11.

19-3037 Repealed. Laws 2004, LB 927, § 3.

19-3038 Repealed. Laws 1973, LB 561, § 11.

19-3039 Repealed. Laws 1973, LB 561, § 11.

19-3040 Repealed. Laws 2004, LB 927, § 3.

19-3041 Repealed. Laws 2004, LB 927, § 3.

19-3042 Repealed. Laws 2004, LB 927, § 3.

19-3043 Repealed. Laws 2004, LB 927, § 3.

19-3044 Repealed. Laws 2004, LB 927, § 3.

19-3045 Repealed. Laws 2004, LB 927, § 3.

19-3046 Repealed. Laws 2004, LB 927, § 3.

19-3047 Repealed. Laws 2004, LB 927, § 3.

19-3048 Repealed. Laws 2004, LB 927, § 3.

19-3049 Repealed. Laws 2004, LB 927, § 3.

19-3050 Repealed. Laws 2004, LB 927, § 3.

19-3051 Repealed. Laws 2004, LB 927, § 3.

19-3052 Annexation of territory; redistricting; when.

(1) For purposes of this section, municipality shall mean any city of the first or second class or village which elects members of its governing board by districts.

(2) Any municipality which annexes territory and thereby brings sufficient new residents into such municipality so as to require that election districts be redrawn to maintain substantial population equality between districts shall redistrict its election districts so that such districts are substantially equal in population within one hundred and eighty days after the effective date of the ordinance annexing the territory. Such redistricting shall create election districts which are substantially equal in population as determined by the most recent federal decennial census.

(3) No municipality which proposes to annex territory and thereby bring new residents into the municipality shall annex such territory unless the redistricting required by subsection (2) of this section will be accomplished at least eighty days prior to the next primary election in which candidates for the governing body of the municipality are nominated.

(4)(a) No city of the first or second class shall annex any territory during the period from eighty days prior to any primary election in which candidates for the governing body of the city are nominated until the date of the general election of the same year if such annexation would bring sufficient new residents into such city so as to require that election districts be redrawn to maintain substantial population equality between districts.

(b) No village shall annex any territory during the period eighty days prior to the election at which members of the governing body of the village are chosen until the date of such election if such annexation would bring sufficient new

residents into such village so as to require that election districts be redrawn to maintain substantial population equality between districts.

(5)(a) No proposed annexation by a municipality shall be restricted or governed by this section unless such annexation would bring sufficient new residents into such municipality so as to require the election districts of the municipality to be redrawn to maintain substantial population equality between districts.

(b) Nothing in this section shall be construed to require a municipality to redraw the boundaries of its election districts following an annexation unless such annexation brought sufficient new residents into such municipality so as to require such redistricting to maintain substantial population equality between districts.

(c) For the purposes of this section only, a municipal annexation shall be held to have brought sufficient new residents into such municipality so as to require that its election districts be redrawn to maintain substantial population equality between districts if, following such annexation, the total range of deviation from the mean population of each election district, according to the most recent federal decennial census, exceeds ten percent.

Source: Laws 1994, LB 630, § 1.

ARTICLE 31

MUNICIPAL VACANCIES
(Applicable to cities of the first or second class and villages.)

Section
19-3101. City council or board of trustees; vacancy; when.

19-3101 City council or board of trustees; vacancy; when.

In all cities of the first and second classes and villages regardless of the form of government, in addition to the events listed in section 32-560 and any other reasons for a vacancy provided by law, after notice and a hearing, a vacancy on the city council or board of trustees shall exist if a member is absent from more than five consecutive regular meetings of the council or board unless the absences are excused by a majority vote of the remaining members.

Source: Laws 2002, LB 1054, § 1.

ARTICLE 32

DEFECTIVE PUBLIC PLACES

Section
19-3201. Repealed. Laws 1969, c. 138, § 28.

19-3201 Repealed. Laws 1969, c. 138, § 28.

ARTICLE 33

OFFSTREET PARKING
(Applicable to cities of the primary, first, or second class.)

(a) OFFSTREET PARKING DISTRICT ACT

Section
19-3301. Act, how cited.

Section
19-3302. Terms, defined.
19-3303. Districts authorized; powers.
19-3304. Notice; given or posted by whom.
19-3305. Proceedings, taxes or assessments levied, bonds issued; validity.
19-3306. Procedure authorized.
19-3307. Remedies not exclusive.
19-3308. Curative clauses; cumulative.
19-3309. Alternative authority and procedure.
19-3310. Sections, liberally construed.
19-3311. Offstreet parking facilities; authorized; powers; home rule charter provisions excepted; limitations; duties of city council.
19-3312. Proposed districts; boundaries; notice; objections; hearing.
19-3313. Objections to formation of district; percentage required; effect; designation of district.
19-3314. Costs; special assessment; notice; contents; appeal.
19-3315. Taxes and assessments; purpose; procedure; notice; hearing.
19-3315.01. Taxes, assessments, and revenue; use; notice; protest.
19-3316. Assessments; delinquent; interest; notice; lien; payment.
19-3317. Bonds, authorized; interest; rate; funding; terms; warrants.
19-3318. Proposed offstreet parking district; petition; contents; signers; requisite number.
19-3319. Petition; notice; protest.
19-3320. District boundaries; change; notice; contents.
19-3321. District boundaries; additional land; notice; mailing; protest; number required; effect.
19-3322. District; land not included.
19-3323. Termination of proceedings for creation or change of district by protest; effect.
19-3324. Protest or objection; withdrawal; effect.
19-3325. Objection or protest; estoppel.
19-3326. Issuance of bonds; certificate by city clerk; annual taxes; collection.

(b) MISCELLANEOUS

19-3327. Offstreet parking; additional authority; notice; hearing; written objections; resolution; procedure.

(a) OFFSTREET PARKING DISTRICT ACT

19-3301 Act, how cited.

Sections 19-3301 to 19-3326 shall be known and may be cited as the Offstreet Parking District Act.

Source: Laws 1967, c. 60, § 1, p. 198; R.S.Supp.,1967, § 16-812; Laws 1969, c. 88, § 1, p. 437; Laws 1997, LB 746, § 2.

19-3302 Terms, defined.

As used in sections 19-3301 to 19-3326, unless the context otherwise requires:

Offstreet parking facilities includes parking lots, garages, buildings and multifloor buildings for the parking of motor vehicles.

Source: Laws 1967, c. 60, § 2, p. 198; R.S.Supp.,1967, § 16-813; Laws 1969, c. 88, § 2, p. 437.

19-3303 Districts authorized; powers.

In addition to matters specifically elsewhere set forth in sections 19-3301 to 19-3326, such sections authorize and include the following:

(1) The formation of offstreet parking districts;

(2) The acquisition of lands, property and rights-of-way necessary or convenient for use as offstreet parking facilities;

(3) The acquisition of lands, property and rights-of-way necessary or convenient for the opening, widening, straightening or extending of streets or alleys necessary or convenient for ingress to and egress from any offstreet parking facility;

(4) The acquisition by condemnation, purchase or gift of property or any interest therein. Any lands or property necessary or convenient for offstreet parking facilities may be acquired in fee simple by condemnation or otherwise;

(5) The improvement of any acquired lands by the construction thereon of garages or other buildings, including multifloor buildings, or improvements necessary or convenient for offstreet parking facilities including paying from revenue received pursuant to sections 19-3301 to 19-3326 all or a portion of the cost of a covered or uncovered mall to be constructed in a street or alley pursuant to city authority to construct such improvements in connection with paving and street improvements;

(6) The improvement of parking places and any alleys, streets or ways necessary or convenient for ingress to or egress from offstreet parking facilities;

(7) The issuance, sale and payment of bonds to pay the cost and expense of any acquisition or improvement authorized by sections 19-3301 to 19-3326;

(8) The administration, maintenance, operation and repair of such offstreet parking facilities, including the maintenance of parking meters thereon;

(9) The collection of fees or charges to pay all or any part of the cost of improving, repairing, maintaining or operating offstreet parking facilities and of acquiring and improving offstreet parking facilities;

(10) The employment of engineers, attorneys and other persons necessary or convenient for the doing of any acts authorized by sections 19-3301 to 19-3326; and

(11) The doing of all acts and things necessary or convenient for the accomplishment of the purpose of sections 19-3301 to 19-3326. The enumeration of specific authority in sections 19-3301 to 19-3326 does not limit in any way the general authority granted by sections 19-3301 to 19-3326.

Source: Laws 1967, c. 60, § 3, p. 198; R.S.Supp.,1967, § 16-814; Laws 1969, c. 88, § 3, p. 438; Laws 1972, LB 1430, § 1.

19-3304 Notice; given or posted by whom.

Whenever any notice is to be given or posted pursuant to the provisions of sections 19-3301 to 19-3326 and the officer to give or post notice is not designated, the notice shall be given or posted by the city engineer. Any notice or posting shall not be invalidated because given or done by an officer other than those whose duty it is to give the notice or perform the posting.

Source: Laws 1967, c. 60, § 4, p. 200; R.S.Supp.,1967, § 16-815; Laws 1969, c. 88, § 4, p. 439.

19-3305 Proceedings, taxes or assessments levied, bonds issued; validity.

Any proceedings taken, taxes or assessments levied or bonds issued pursuant to sections 19-3301 to 19-3326 shall not be held invalid for failure to comply with the provisions of sections 19-3301 to 19-3326.

Source: Laws 1967, c. 60, § 5, p. 200; R.S.Supp.,1967, § 16-816; Laws 1969, c. 88, § 5, p. 439.

19-3306 Procedure authorized.

Any procedure not expressly set forth in sections 19-3301 to 19-3326 but deemed necessary or convenient to carry out any of its purposes is authorized.

Source: Laws 1967, c. 60, § 6, p. 200; R.S.Supp.,1967, § 16-817; Laws 1969, c. 88, § 6, p. 440.

19-3307 Remedies not exclusive.

The remedies provided in sections 19-3301 to 19-3326 for the enforcement of taxes or assessments levied or bonds issued pursuant to the provisions of sections 19-3301 to 19-3326 are not exclusive and additional remedies may be provided at any time.

Source: Laws 1967, c. 60, § 7, p. 200; R.S.Supp.,1967, § 16-818; Laws 1969, c. 88, § 7, p. 440.

19-3308 Curative clauses; cumulative.

The curative clauses of sections 19-3301 to 19-3326 are cumulative and each is to be given full effect.

Source: Laws 1967, c. 60, § 8, p. 200; R.S.Supp.,1967, § 16-819; Laws 1969, c. 88, § 8, p. 440.

19-3309 Alternative authority and procedure.

Sections 19-3301 to 19-3326 do not affect any other law relating to the same or any similar subject but provide an alternative authority and procedure for the subject to which they relate. When proceeding under sections 19-3301 to 19-3326, their provisions only need be followed.

Source: Laws 1967, c. 60, § 9, p. 200; R.S.Supp.,1967, § 16-820; Laws 1969, c. 88, § 9, p. 440.

19-3310 Sections, liberally construed.

Sections 19-3301 to 19-3326 shall be liberally construed.

Source: Laws 1967, c. 60, § 10, p. 200; R.S.Supp.,1967, § 16-821; Laws 1969, c. 88, § 10, p. 440.

19-3311 Offstreet parking facilities; authorized; powers; home rule charter provisions excepted; limitations; duties of city council.

Notwithstanding the provisions of any home rule charter and in addition to the powers set out in sections 15-269 to 15-276 and 16-801 to 16-811, any city of the primary, first or second class in Nebraska is hereby authorized to own, purchase, construct, equip, lease, either as lessee or lessor, or operate within such city, offstreet parking facilities for the use of the general public and to refund bonds of the city issued pursuant to sections 19-3301 to 19-3326, or in a city of the first class to refund outstanding bonds issued to purchase, construct,

equip or operate such offstreet parking facilities pursuant to sections 16-801 to 16-811. Except as otherwise provided in any home rule charter, the grant of power herein does not include power to engage, directly or indirectly, in the sale of gasoline, oil, or other merchandise or in furnishing of any service other than of parking motor vehicles as provided in sections 19-3301 to 19-3326. Any such city shall have the authority to acquire by grant, contract, purchase or through condemnation, as provided by law or by any home rule charter for such acquisition, all real or personal property, including a site or sites on which to construct such offstreet parking facility, necessary or convenient in carrying out of this grant of power; *Provided*, that property now used or hereafter acquired for public offstreet motor vehicle parking by a private operator shall not be subject to condemnation. Before any such city may commence a program to construct, purchase, or acquire by other means a proposed offstreet parking facility or facilities, notice shall be given, by publication once each week for not less than thirty days, inviting application for private ownership and operation of offstreet parking facilities, which notice shall fix a date for a public hearing on any application received. If no application or applications have been received or if received, the same have been disapproved by the governing body of such city after a public hearing concerning such applications, then such city may proceed in the exercise of the powers herein granted. The procedure to condemn property shall be exercised in the manner set forth in sections 76-701 to 76-724, except as to properties specifically excluded by section 76-703, and as to which sections 19-701 to 19-707 are applicable. The duties set forth for the mayor and city council in sections 19-3312 to 19-3325 shall be the duties and responsibilities of the city council in any city which by law or by home rule charter has exclusively vested all legislative powers of the city in such council.

Source: Laws 1967, c. 60, § 11, p. 200; R.S.Supp.,1967, § 16-822; Laws 1969, c. 88, § 11, p. 440; Laws 1973, LB 540, § 1; Laws 1975, LB 564, § 1.

19-3312 Proposed districts; boundaries; notice; objections; hearing.

The mayor and city council may fix and establish by resolution pursuant to the provisions of sections 19-3301 to 19-3326 the boundaries of a proposed district, which boundaries shall include all the land in the district which in the opinion of the mayor and city council will be specially benefited thereby. Notice of the time and place of a hearing before the city council on the creation of such district and of protests and objections to the creation of the district as set forth in the notice shall be given by publication one time each week for not less than three weeks in a daily or weekly newspaper of general circulation published in the city. The notice shall set forth in addition the proposed boundaries of the district and the engineer's estimate of the sum of money to be expended in the acquisition of property and the construction of the offstreet parking facility. Not later than the hour set for the hearing any owner or any person interested in any real estate within the proposed district may severally or with other owners file with the city clerk written objections to the thing proposed to be done, the extent of the proposed district, or both, and every person so interested shall have a right to protest on any grounds and to object to his real estate being included in the district, and at such hearing all

objections and protests shall be heard and passed upon by the mayor and city council.

Source: Laws 1967, c. 60, § 12, p. 201; R.S.Supp.,1967, § 16-823; Laws 1969, c. 88, § 12, p. 441.

19-3313 Objections to formation of district; percentage required; effect; designation of district.

If the owners of the record title representing more than fifty percent of the taxable valuation of all of the taxable real property included in such proposed district or districts and who were such owners at the time the notice of hearing on objections to the creation of the district was first published file with the city clerk within twenty days of the first publication of the notice written objections to the formation of the district, such district shall not be formed. If objections are not filed by owners of such fifty percent of the taxable valuation of all of the taxable real property and if the mayor and city council find, after considering any other protests and objections that may be filed and after considering the evidence presented at the hearing, that the public health, welfare, convenience, or necessity requires the formation of such an offstreet parking district and facilities, then such district shall be formed by ordinance. If the mayor and city council find that the boundaries as set forth in the resolution and notice include land which should not be included, then the ordinance shall fix the boundaries of the district so as to exclude such land. Each district formed pursuant to this section shall be numbered and the designation of the district shall be called, using appropriate numbers, Vehicle Offstreet Parking District No. .... of the City of ....., Nebraska. The ordinance creating the district need not designate the exact location of the proposed offstreet parking facility but shall designate the engineer's estimate of the sum of money to be expended in the acquisition of property and construction of such offstreet parking facility or the share of such project as will be borne by the district. The total cost and expenses shall include:

(1) The amounts estimated to be paid for the property to be acquired;

(2) All costs and expenses in construction of the offstreet parking facility;

(3) All engineering expense; and

(4) The estimated expense of issuing and selling bonds and all other expenses which the city would not have except for the creation of such offstreet parking district.

Source: Laws 1967, c. 60, § 13, p. 202; R.S.Supp.,1967, § 16-824; Laws 1969, c. 88, § 13, p. 442; Laws 1979, LB 187, § 85; Laws 1992, LB 719A, § 85.

19-3314 Costs; special assessment; notice; contents; appeal.

In the ordinance creating the district, the mayor and city council shall provide that in addition to the levy of taxes and pledge of revenue all or a portion of the cost of acquisition, including construction, maintenance, repair, and reconstruction of any offstreet parking facility may be paid for by special assessment against the real estate located in such district in proportion to the special benefit of each parcel of real estate. The amounts of such special assessments shall be determined by the mayor and city council sitting as a board of equalization. Notice of a hearing on any special assessments to be

levied under section 19-3315 shall be given to the landowners in such district by publication of the description of the land, the amount proposed to be assessed, and the general purpose for which such assessment is to be made one time each week for three weeks in a daily or weekly newspaper of general circulation published in the city. The notice shall provide the date, time, and place of hearing to determine any objection or protest by landowners in the district as to the amount of assessment made against their land. An appeal by writ of error or direct appeal to the district court of the county in which such city is located may be taken from the decision of the city council in the same manner and under like terms and conditions as appeals may be taken from the amount of special assessments levied in street improvement districts of such city as now provided by law.

Source: Laws 1967, c. 60, § 14, p. 203; R.S.Supp.,1967, § 16-825; Laws 1969, c. 88, § 14, p. 443; Laws 1972, LB 1430, § 2; Laws 1973, LB 540, § 1.

19-3315 Taxes and assessments; purpose; procedure; notice; hearing.

The mayor and city council may by resolution levy and assess taxes and assessments as follows:

(1) A property tax within any district of not to exceed thirty-five cents on each one hundred dollars of taxable valuation of taxable property within such district subject to section 77-3443 to pay all or any part of the cost to improve, repair, maintain, reconstruct, operate, or acquire any offstreet parking facility and to pay principal and interest on any bonds issued for an offstreet parking facility for such district. Such tax shall be levied and collected at the same time and under the same provisions as the regular general city tax. The taxes collected from any district shall be used only for the benefit of such district. For purposes of subsection (2) of section 77-3443, the tax shall be counted in the allocation by the city proportionately, by dividing the total taxable valuation of the taxable property within the district by the total taxable valuation of the taxable property within the city multiplied by the levy of the district;

(2) A special assessment against the real property located in such district to the extent of the special benefit thereto for the purpose of paying all or any part of the total costs and expenses of acquisition, including construction, of an offstreet parking facility in such district. The special assessment shall be levied as provided in section 19-3314. In the event that subsequent to the levy of assessments the use of any parcel of land changes so that, had the new use existed at the time of making such levy, the assessment on such parcel would have been higher than the assessment actually made, an additional assessment may be made on such parcel by the mayor and city council taking into consideration the new and changed use of the property. The total amount of assessments levied under this subdivision shall not exceed the total costs and expenses of acquiring a facility defined in section 19-3313. The levy of an additional assessment shall not reduce or affect in any manner the assessments previously levied. Additional assessments shall be levied as provided in section 19-3314, except that published notice may be omitted if notice is personally served on the owner at least twenty days prior to the date of hearing. All assessments levied under this subdivision shall constitute a sinking fund for the payment of principal and interest on bonds issued for such facility as provided by section 19-3317 until such bonds and interest are fully paid; and

(3) A special assessment against the real property located in such district to the extent of special benefit thereto for the purpose of paying all or any part of the costs of maintenance, repair, and reconstruction of such offstreet parking facility in the district. The mayor and city council may levy such assessments under either of the following methods: (a) The mayor and city council may, not more frequently than annually, determine the costs of maintenance, repair, and reconstruction of such facility and such costs shall be assessed to the real property located in such district as provided by section 19-3314. At the hearing on such assessments, objections may be made to the total costs and the proposed allocation of such costs among the parcels of real property in such district; or (b) after notice is given to the owners as provided in section 19-3314, the mayor and city council may establish and may change from time to time the percentage of such costs of maintenance, repair, and reconstruction which each parcel of real property in any district shall pay. Thereafter, the mayor and city council shall annually determine the total amount of such costs for each period since costs were last assessed and shall after a hearing assess such costs to the real property in the district in accordance with the percentages previously established or as established at such hearing. Notice of such hearing shall be given as provided in section 19-3314 and shall state the total cost and percentage to be assessed to each parcel of real property. Unless written objections are filed with the city clerk at least five days before the hearing, all objections to the amount of total costs and the assessment percentages shall be deemed to have been waived and assessments shall be levied as stated in such notice unless the mayor and city council reduce any assessment. At such hearing, the assessment percentage for the assessment of costs in the future may be changed.

Source: Laws 1967, c. 60, § 15, p. 203; R.S.Supp.,1967, § 16-826; Laws 1969, c. 88, § 15, p. 444; Laws 1973, LB 540, § 3; Laws 1975, LB 564, § 2; Laws 1979, LB 187, § 86; Laws 1992, LB 719A, § 86; Laws 1997, LB 269, § 21; Laws 2002, LB 994, § 3.

19-3315.01 Taxes, assessments, and revenue; use; notice; protest.

(1) In addition to uses otherwise authorized in the Offstreet Parking District Act, any money available from taxes or assessments levied pursuant to section 19-3315 or revenue derived from the operation of an offstreet parking facility may be used in the district for any one or more of the following purposes as determined by a vote of the majority of the city council:

(a) Improvement of any public place or facility, including landscaping, physical improvements for decoration or security purposes, and plantings;

(b) Construction or installation of pedestrian shopping malls or plazas, sidewalks or moving sidewalks, parks, meeting and display facilities, bus stop shelters, lighting, benches or other seating furniture, sculptures, trash receptacles, shelters, foundations, skywalks, and pedestrian and vehicular overpasses and underpasses, and any useful or necessary public improvements;

(c) Leasing, acquiring, constructing, reconstructing, extending, maintaining, or repairing parking lots or parking garages, both above and below the ground, or other facilities for the parking of vehicles, including the power to install such facilities in public areas, whether such areas are owned in fee or by easement;

(d) Creation and implementation of a plan for improving the general architectural design of public areas;

(e) Development of any public activities and promotion of public events, including the management, promotion, and advocacy of retail trade activities or other promotional activities;

(f) Maintenance, repair, and reconstruction of any publicly owned improvements or facilities;

(g) The creation by ordinance and operation of a revolving loan fund for the purpose of providing financing upon appropriate terms and conditions for capital improvements to privately owned facilities, subject to the following conditions:

(i) No loan from such fund shall exceed an amount equivalent to forty-nine percent of the total cost of the improvements to be financed by the loan;

(ii) The city shall require and receive appropriate security to guarantee the repayment of the loan; and

(iii) The proposed improvements to be financed shall serve to foster the purposes of the act, promote economic activity, or contribute to the public health, safety, and welfare;

(h) Any other project or undertaking for the betterment of the public facilities, whether the project is capital or noncapital in nature;

(i) Enforcement of parking regulations and the provision of security; and

(j) Employing or contracting for personnel, including administrators, for any improvement program under the act, and providing for any service as may be necessary or proper to carry out the purposes of the act.

(2) If any part of the revenue from fees and charges on the use of an offstreet parking facility or from onstreet parking meters within the district has been dedicated for the payment of principal or interest on bonds issued pursuant to section 19-3317 or has been pledged as security for such bonds, such revenue shall not be used for the purposes set forth in subsection (1) of this section until such time as such bonds have been fully paid or sufficient revenue has been placed in the sinking fund to guarantee such repayment.

(3) If the city council proposes to exercise the authority granted by subsection (1) of this section for any one or more of the purposes set forth in such subsection within the boundaries of a district in existence prior to September 13, 1997, the city clerk shall give notice of the council's intention to exercise such authority by publishing notice of such intent in a newspaper of general circulation in the city once a week for two consecutive weeks. The notice shall describe the proposed new uses for district revenue and shall specify the time for hearing objections to such uses, which time shall be at least fifteen days after the date of publication of the notice. The clerk shall accept written protests or objections to the approval of the proposed new uses of district revenue. If the owners of real property representing more than fifty percent of the actual valuation of all real property in the district file a written protest or objection within twenty days after the date of publication of the notice, district revenue shall not be applied to such uses.

Source: Laws 1997, LB 746, § 1.

19-3316 Assessments; delinquent; interest; notice; lien; payment.

Special assessments levied pursuant to section 19-3315 shall become due in fifty days after the date of such levy and shall become delinquent in one or

more installments over a period of not to exceed twenty years, in such manner as the mayor and city council shall determine at the time of making the levy. The first installment may become delinquent in fifty days after the date of levy if so specified by the mayor and the city council. Each of such installments shall draw interest before due date of not more than the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, and after delinquency at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, as the mayor and city council shall determine at the time the levy shall be made, except that any installment may be paid within fifty days of the date of such levy without interest being charged thereon. If three or more of such installments become delinquent and unpaid on the same property, the mayor and city council may by resolution declare all future installments on such delinquent property to be due on a future fixed date. The resolution shall set forth the description of the property and the name of its record title owner and shall provide that all future installments shall become delinquent upon such fixed date. A copy of such resolution shall be published one time each week for not less than twenty days in a legal newspaper of general circulation published in the city or, if none is published in the city, a legal newspaper of general circulation in such city. After the fixed date such future installments shall be deemed to be delinquent and the city may proceed to enforce and collect the total amount due and all future installments. Except as otherwise provided, all special assessments levied under section 19-3315 shall be liens on the property and shall be certified for collection and be collected in the same manner as special assessments made for improvements in street improvement districts in the city are collected.

Source: Laws 1967, c. 60, § 16, p. 204; R.S.Supp.,1967, § 16-827; Laws 1969, c. 88, § 16, p. 444; Laws 1973, LB 540, § 4; Laws 1980, LB 933, § 25; Laws 1981, LB 167, § 26; Laws 1986, LB 960, § 17.

19-3317 Bonds, authorized; interest; rate; funding; terms; warrants.

For the purpose of paying the cost of such offstreet parking facility, or any portion thereof or to refund all or a portion of any outstanding bonds of the city authorized to be refunded by sections 19-3301 to 19-3326, the mayor and city council shall have power and may, by ordinance, cause to be issued general obligation bonds of the city, to be called Offstreet Parking Bonds of the City of ....., Nebraska, payable in not exceeding twenty years from date and bearing interest, payable either annually or semiannually, not exceeding a rate of twelve percent per annum with interest coupons attached. In such cases they shall also provide that special taxes levied within the district pursuant to section 19-3315 shall constitute a sinking fund for the payment of such bonds and the mayor and city council may, in the ordinance, pledge all or any part of the revenue from fees and charges on the use of the parking facility or fees and charges from onstreet parking meters within the district not already pledged as security for such bonds. There shall be levied upon all the taxable property in such city a tax which, together with such sinking fund derived from special assessments and other revenue pledged for the payment of the bonds and interest thereon, shall be sufficient to meet payments of interest and principal as the same become due. All such bonds shall bear such date or dates, mature at such time or times, be in such denominations, be in such form either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, and at such place or places within or

without the State of Nebraska as such ordinance may provide. No proceedings for the issuance of bonds of any city shall be required other than those required by the provisions of sections 19-3301 to 19-3326. Such bonds may be issued either before or after the completion of the acquisition or construction of the offstreet parking facility, as the mayor and city council may determine best. For the purpose of paying costs of an offstreet parking facility prior to issuance of bonds, warrants may be issued by the mayor and city council upon such terms as the mayor and city council may determine, which warrants shall be redeemed and paid upon the sale of bonds authorized in this section.

Source: Laws 1967, c. 63, § 1, p. 212; Laws 1967, c. 60, § 17, p. 205; R.S.Supp.,1967, § 16-828; Laws 1969, c. 88, § 17, p. 445; Laws 1972, LB 1430, § 3; Laws 1973, LB 540, § 5; Laws 1981, LB 392, § 1.

19-3318 Proposed offstreet parking district; petition; contents; signers; requisite number.

The owners of the record title of any real property within a given area in any city of the first or second class representing fifty-five percent of the total taxable valuation of all of the taxable real property within the proposed district to be formed, which district must consist of contiguous lands and lots, may petition the mayor and city council to create a vehicle offstreet parking district by ordinance, which district shall be consecutively numbered, and to acquire property and construct an offstreet parking facility thereon as provided in the Offstreet Parking District Act. For purposes of the act, property separated by streets or alleys shall be deemed to be contiguous. The petition shall contain:

(1) A general description of the exterior boundaries of the proposed district;

(2) A general statement of the estimated amount of money involved in the acquisition of the land and property and construction of the facility;

(3) A general description of the improvements proposed to be made or constructed; and

(4) A statement that the petition is filed pursuant to this section.

The petition may consist of any number of separate instruments, but a description of the real property represented by each petitioner shall be included either opposite the signature or by separate instrument.

When the petition is filed, the city clerk shall check or cause it to be checked. If it is signed by qualified signers representing the required percentage of the total taxable valuation, the clerk shall make a certificate to that effect and present the petition and certificate to the mayor and city council.

Source: Laws 1967, c. 60, § 18, p. 206; R.S.Supp.,1967, § 16-829; Laws 1969, c. 88, § 18, p. 447; Laws 1979, LB 187, § 87; Laws 1992, LB 719A, § 87.

19-3319 Petition; notice; protest.

When such petition is presented to the mayor and city council it shall be the duty of the mayor and city council to proceed as provided in sections 19-3312 and 19-3313 as upon the passage of a resolution for the creation of an offstreet

parking district. The same procedure for publication of notice and objections to the creation of the district shall apply.

Source: Laws 1967, c. 60, § 19, p. 206; R.S.Supp.,1967, § 16-830; Laws 1969, c. 88, § 19, p. 448.

19-3320 District boundaries; change; notice; contents.

Whether the ordinance creating the offstreet parking district is passed on the initiative of the council or on the petition of landowners, the council shall not change the boundaries, except after notice of intention to do so given by the clerk by one insertion in the newspaper in which the ordinance and notice were published. The notice shall describe the proposed change and specify the time for hearing objections, which shall be at least fifteen days after publication of the notice.

Source: Laws 1967, c. 60, § 20, p. 207; R.S.Supp.,1967, § 16-831; Laws 1969, c. 88, § 20, p. 448.

19-3321 District boundaries; additional land; notice; mailing; protest; number required; effect.

If the change proposed is to include additional land in the district, the clerk also shall mail a copy of the notice to each person to whom land in the area proposed to be added is assessed as shown in the office of the register of deeds or the county clerk at such person's last-known address. The notice shall be mailed by certified mail at least fifteen days prior to the time set for hearing objections. If the boundaries are changed, objection or protest made by owners of lands excluded by the change shall not be counted in computing a protest but written objection or protest made by owners of the remaining assessable land in the district, including assessable land added by the change and filed with the clerk not later than the time set for hearing, objecting to the proposed change shall be included in computing the protest. If owners of real property representing more than fifty percent of the taxable valuation of all real property in such new proposed district after the change of boundaries file a written protest within twenty days after the notice is published in such newspaper, then such district may not be changed.

Source: Laws 1967, c. 60, § 21, p. 207; R.S.Supp.,1967, § 16-832; Laws 1969, c. 88, § 21, p. 448; Laws 1979, LB 187, § 88; Laws 1992, LB 719A, § 88.

19-3322 District; land not included.

Any land which in the judgment of the mayor and city council will not be benefited shall not be included in the district.

Source: Laws 1967, c. 60, § 22, p. 207; R.S.Supp.,1967, § 16-833; Laws 1969, c. 88, § 22, p. 449.

19-3323 Termination of proceedings for creation or change of district by protest; effect.

If the proceedings for the creation of an original offstreet parking district or for an offstreet parking district under which the boundaries have been changed, are terminated by a protest to the council, a proceeding under the provisions of sections 19-3301 to 19-3326 for the same or substantially the same acquisition

and improvement shall not be commenced within one year thereafter, except on petitions signed by owners of the record title representing a majority of the total land area in the district.

Source: Laws 1967, c. 60, § 23, p. 208; R.S.Supp.,1967, § 16-834; Laws 1969, c. 88, § 23, p. 449.

19-3324 Protest or objection; withdrawal; effect.

Any protest or objection made pursuant to the provisions of sections 19-3301 to 19-3326 or any signature to such objection or protest may be withdrawn by a written withdrawal signed by the person or persons who signed the protest or objection or who affixed the signature to be withdrawn and filed with the clerk at any time prior to the determination of the mayor and city council as to whether or not a protest exists. Any protest, objection or signature withdrawn shall not be counted in computing the protest.

Source: Laws 1967, c. 60, § 24, p. 208; R.S.Supp.,1967, § 16-835; Laws 1969, c. 88, § 24, p. 449.

19-3325 Objection or protest; estoppel.

Proceedings under sections 19-3301 to 19-3326 shall not be attacked after the hearing upon any grounds not stated in an objection or protest filed pursuant to the provisions of sections 19-3301 to 19-3326. Any owner of real estate or person interested in any real estate within the district is estopped to attack the proceedings upon any ground not stated in the protest filed by him pursuant to the provisions of sections 19-3301 to 19-3326.

Source: Laws 1967, c. 60, § 25, p. 208; R.S.Supp.,1967, § 16-836; Laws 1969, c. 88, § 25, p. 450.

19-3326 Issuance of bonds; certificate by city clerk; annual taxes; collection.

(1) After the issuance of bonds hereunder by a city of the first or second class, a certificate shall be issued by the city clerk certifying the same to the county treasurer of the county in which such city is located and the annual taxes within the district shall be handled in the same manner and collected in the same manner as intersection bonds for street paving in the cities of the first class or second class in Nebraska and to be paid to the city for use as provided by sections 19-3301 to 19-3326.

(2) After the issuance of bonds hereunder by a city of the primary class, a certificate shall be issued by the city clerk. Taxes shall be handled and collected as otherwise provided by law or by home rule charter for such city and those taxes paid to the city shall be used as provided in sections 19-3301 to 19-3327.

Source: Laws 1967, c. 60, § 26, p. 208; R.S.Supp.,1967, § 16-837; Laws 1969, c. 88, § 26, p. 450; Laws 1975, LB 564, § 3.

(b) MISCELLANEOUS

19-3327 Offstreet parking; additional authority; notice; hearing; written objections; resolution; procedure.

Any city of the primary, first, or second class, after the creation of an offstreet parking district pursuant to the Offstreet Parking District Act, shall have the power to own, purchase, construct, equip, lease, or operate within such city any

offstreet parking facility in addition to any offstreet parking facility contemplated at the time of the creation of the district if the mayor and city council are of the opinion that the district will be benefited thereby. Whenever the city council deems it advisable to own, purchase, construct, equip, lease, or operate such additional facility, the council shall by resolution set forth the engineer's estimate of the sum of money to be expended in the acquisition of property and the construction of the offstreet parking facility and a description of the facility to be constructed, and if such resolution proposes to acquire by grant, contract, purchase, or through condemnation any offstreet parking facility, the resolution shall state the price and conditions and how such facility shall be acquired, and if assessments are to be levied, the resolution shall state the proposed boundaries of the area in the district in which the special assessments shall be levied. Notice of the time and place of a hearing before the city council on such resolution shall be given by publication one time each week for two weeks in a daily or weekly newspaper of general circulation published in the city. The publication shall contain the entire resolution. The last publication shall not be less than five days nor more than two weeks prior to the date set for such hearing. Not later than the hour set for the hearing, any owner or any person interested in any real property within the proposed area may file with the city clerk written objections to the resolution, the extent of the proposed area, or both, and every person so interested shall have a right to protest on any grounds and to object to his or her real property being included in the area. At such hearing all objections and protests shall be heard and passed upon by the mayor and city council. If the owners of record title representing more than sixty percent of the taxable valuation of all of the taxable real property included in such proposed area and who were such owners at the time the notice of hearing on objections to the creation of the facility was first published file a petition with the city clerk within three days of the date set for the hearing, such resolution shall not be passed.

Source: Laws 1973, LB 540, § 6; Laws 1975, LB 564, § 4; Laws 1979, LB 187, § 89; Laws 1992, LB 719A, § 89.

Cross References

Downtown improvement and parking districts, see section 19-4038.

ARTICLE 34

DOWNTOWN IMPROVEMENT AND PARKING DISTRICT ACT OF 1969

Section
19-3401. Repealed. Laws 1979, LB 251, § 26.
19-3402. Repealed. Laws 1979, LB 251, § 26.
19-3403. Repealed. Laws 1979, LB 251, § 26.
19-3404. Repealed. Laws 1979, LB 251, § 26.
19-3405. Repealed. Laws 1979, LB 251, § 26.
19-3406. Repealed. Laws 1979, LB 251, § 26.
19-3407. Repealed. Laws 1979, LB 251, § 26.
19-3408. Repealed. Laws 1979, LB 251, § 26.
19-3409. Repealed. Laws 1979, LB 251, § 26.
19-3410. Repealed. Laws 1979, LB 251, § 26.
19-3411. Repealed. Laws 1979, LB 251, § 26.
19-3412. Repealed. Laws 1979, LB 251, § 26.
19-3413. Repealed. Laws 1979, LB 251, § 26.
19-3414. Repealed. Laws 1979, LB 251, § 26.
19-3415. Repealed. Laws 1979, LB 251, § 26.

Section
19-3416. Repealed. Laws 1979, LB 251, § 26.
19-3417. Repealed. Laws 1979, LB 251, § 26.
19-3418. Repealed. Laws 1979, LB 251, § 26.
19-3419. Repealed. Laws 1979, LB 251, § 26.
19-3420. Repealed. Laws 1979, LB 251, § 26.

19-3401 Repealed. Laws 1979, LB 251, § 26.

19-3402 Repealed. Laws 1979, LB 251, § 26.

19-3403 Repealed. Laws 1979, LB 251, § 26.

19-3404 Repealed. Laws 1979, LB 251, § 26.

19-3405 Repealed. Laws 1979, LB 251, § 26.

19-3406 Repealed. Laws 1979, LB 251, § 26.

19-3407 Repealed. Laws 1979, LB 251, § 26.

19-3408 Repealed. Laws 1979, LB 251, § 26.

19-3409 Repealed. Laws 1979, LB 251, § 26.

19-3410 Repealed. Laws 1979, LB 251, § 26.

19-3411 Repealed. Laws 1979, LB 251, § 26.

19-3412 Repealed. Laws 1979, LB 251, § 26.

19-3413 Repealed. Laws 1979, LB 251, § 26.

19-3414 Repealed. Laws 1979, LB 251, § 26.

19-3415 Repealed. Laws 1979, LB 251, § 26.

19-3416 Repealed. Laws 1979, LB 251, § 26.

19-3417 Repealed. Laws 1979, LB 251, § 26.

19-3418 Repealed. Laws 1979, LB 251, § 26.

19-3419 Repealed. Laws 1979, LB 251, § 26.

19-3420 Repealed. Laws 1979, LB 251, § 26.

ARTICLE 35

PENSION PLANS

(Applicable to cities of the first or second class and villages.)

Section
19-3501. Pension plans authorized; employees covered; contributions; funding past service benefits; joinder in plan by two or more cities; reports.

19-3501 Pension plans authorized; employees covered; contributions; funding past service benefits; joinder in plan by two or more cities; reports.

(1) The governing body of cities of the first and second classes and villages may, by appropriate ordinance or proper resolution, establish a pension plan

designed and intended for the benefit of the regularly employed or appointed full-time employees of the city. Any recognized method of funding a pension plan may be employed. The plan shall be established by appropriate ordinance or proper resolution, which may provide for mandatory contribution by the employee. The city may also contribute, in addition to any amounts contributed by the employee, amounts to be used for the purpose of funding employee past service benefits. Any two or more cities of the first and second classes and villages may jointly establish such a pension plan by adoption of appropriate ordinances or resolutions. Such a pension plan may be integrated with old age and survivors insurance, otherwise generally known as social security.

(2)(a) Beginning December 31, 1998, and each December 31 thereafter, the clerk of a city or village with a retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code shall file with the Public Employees Retirement Board an annual report on such plan and shall submit copies of such report to the members of the Nebraska Retirement Systems Committee of the Legislature. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

(i) The number of persons participating in the retirement plan;

(ii) The contribution rates of participants in the plan;

(iii) Plan assets and liabilities;

(iv) The names and positions of persons administering the plan;

(v) The names and positions of persons investing plan assets;

(vi) The form and nature of investments;

(vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the city or village clerk may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the city council or village board shall cause to be prepared a quadrennial report and shall file the same with the Public Employees Retirement Board and submit to the members of the Nebraska Retirement Systems Committee of the Legislature a copy of each report. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

(3) Subsection (1) of this section shall not apply to firefighters or police officers who are included under an existing pension or retirement system established by the municipality employing such firefighters or police officers or

the Legislature. If a city of the first class decreases in population to less than five thousand, as determined by the latest federal census, any police officer or firefighter employed by such city on or prior to the date such city becomes a city of the second class shall retain the level of benefits established by the Legislature for police officers or firefighters employed by a city of the first class on the date such city becomes a city of the second class.

Source: Laws 1957, c. 26, § 1, p. 180; Laws 1963, c. 63, § 10, p. 262; Laws 1967, c. 98, § 1, p. 297; R.S.Supp.,1967, § 16-328; Laws 1969, c. 79, § 1, p. 410; Laws 1974, LB 1002, § 1; Laws 1983, LB 291, § 2; Laws 1989, LB 145, § 1; Laws 1998, LB 1191, § 21; Laws 1999, LB 795, § 9.

ARTICLE 36

UNATTENDED CHILD IN MOTOR VEHICLE

Section
19-3601. Repealed. Laws 1983, LB 1, § 1.

19-3601 Repealed. Laws 1983, LB 1, § 1.

ARTICLE 37

ORDINANCES
(Applicable to cities of the first or second class and villages.)

Section
19-3701. Ordinances; effective date.

19-3701 Ordinances; effective date.

All ordinances for the government of any city of the first or second class or of any village, adopted by the voters of said city after submission to them by either initiative or referendum petition shall become immediately effective thereafter; but no ordinance for the government of any such city or village except as provided in sections 16-405 and 17-613, which has been adopted by such city or village without submission to the voters of such city or village, shall go into effect until fifteen days after the passage of such ordinance.

Source: Laws 1897, c. 32, § 12, p. 234; R.S.1913, § 5237; Laws 1915, c. 96, § 1, p. 238; C.S.1922, § 4436; C.S.1929, § 18-512; R.S.1943, § 18-130; Laws 1971, LB 282, § 3.

Cross References

For other provisions applicable to ordinances of cities of the first and second class and villages, see sections 16-247, 16-403 to 16-405, 17-613 to 17-616, and 19-604.

Immediate publication of notice of creation of paving district was proper. Freeman v. City of Neligh, 155 Neb. 651, 53 N.W.2d 67 (1952).

The provisions of this section that ''no ordinance for the government of any city shall go into effect until thirty days after the passage of the same'' does not apply to issuing a liquor license. Enos v. Hanff, 98 Neb. 245, 152 N.W. 397 (1915).

An ordinance adopted by the voters under the initiative statute does not ''go into effect'' until thirty days after it is adopted. Eyre v. Doerr, 97 Neb. 562, 150 N.W. 625 (1915).

ARTICLE 38

POLICE SERVICES
(Applicable to cities of the first or second class and villages.)

Section
19-3801. Contract with county board for police services; sheriff; powers; duties.

Section
19-3802. Villages; cancel contract with county; effect.
19-3803. Villages; contract; cost; negotiated.
19-3804. State and federal grants; expend.

19-3801 Contract with county board for police services; sheriff; powers; duties.

Any city of the first or second class or any village may, under the provisions of the Interlocal Cooperation Act or Joint Public Agency Act, enter into a contract with the county board of its county for police services to be provided by the county sheriff. The county board shall enter into such a contract when requested by a village to do so. Whenever any such contract has been entered into, the sheriff shall, in addition to his or her other powers and duties, have all the powers and duties of peace officers within and for the city or village so contracting.

Source: Laws 1971, LB 594, § 1; Laws 1999, LB 87, § 65.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

19-3802 Villages; cancel contract with county; effect.

Any village entering into a contract pursuant to section 19-3801 may serve notice of its intention to cancel such contract after such contract has been in force for one year. Upon cancellation, such village shall provide its own police services.

Source: Laws 1971, LB 594, § 2.

19-3803 Villages; contract; cost; negotiated.

The cost to any village under a contract entered into pursuant to sections 19-3801 to 19-3804 shall be negotiated and included as a part of the formal contract entered into and agreed to by both parties.

Source: Laws 1971, LB 594, § 3; Laws 1977, LB 57, § 1.

19-3804 State and federal grants; expend.

Any county providing, or city or village receiving, police services pursuant to sections 19-3801 to 19-3804 may receive and expend for the purposes of sections 19-3801 to 19-3804 any available state or federal grants.

Source: Laws 1971, LB 594, § 4.

ARTICLE 39

NEBRASKA PUBLIC TRANSPORTATION ACT OF 1975

Section
19-3901. Transferred to section 13-1201.
19-3902. Transferred to section 13-1202.
19-3903. Transferred to section 13-1203.
19-3904. Transferred to section 13-1204.
19-3905. Transferred to section 13-1205.
19-3906. Transferred to section 13-1206.
19-3907. Transferred to section 13-1207.
19-3908. Transferred to section 13-1208.

Section
19-3909. Transferred to section 13-1209.
19-3909.01. Transferred to section 13-1210.
19-3910. Transferred to section 13-1211.
19-3911. Transferred to section 13-1212.

19-3901 Transferred to section 13-1201.

19-3902 Transferred to section 13-1202.

19-3903 Transferred to section 13-1203.

19-3904 Transferred to section 13-1204.

19-3905 Transferred to section 13-1205.

19-3906 Transferred to section 13-1206.

19-3907 Transferred to section 13-1207.

19-3908 Transferred to section 13-1208.

19-3909 Transferred to section 13-1209.

19-3909.01 Transferred to section 13-1210.

19-3910 Transferred to section 13-1211.

19-3911 Transferred to section 13-1212.

ARTICLE 40

BUSINESS IMPROVEMENT DISTRICTS
(Applicable to all cities.)

Section
19-4001. Repealed. Laws 1979, LB 251, § 26.
19-4002. Repealed. Laws 1979, LB 251, § 26.
19-4003. Repealed. Laws 1979, LB 251, § 26.
19-4004. Repealed. Laws 1979, LB 251, § 26.
19-4005. Repealed. Laws 1979, LB 251, § 26.
19-4006. Repealed. Laws 1979, LB 251, § 26.
19-4007. Repealed. Laws 1979, LB 251, § 26.
19-4008. Repealed. Laws 1979, LB 251, § 26.
19-4009. Repealed. Laws 1979, LB 251, § 26.
19-4010. Repealed. Laws 1979, LB 251, § 26.
19-4011. Repealed. Laws 1979, LB 251, § 26.
19-4012. Repealed. Laws 1979, LB 251, § 26.
19-4013. Repealed. Laws 1979, LB 251, § 26.
19-4014. Repealed. Laws 1979, LB 251, § 26.
19-4015. Act, how cited.
19-4016. Sections, how construed.
19-4017. Sections; purpose.
19-4017.01. Terms, defined.
19-4018. Cities; business improvement district; special assessment; business license and occupation tax; use of proceeds.
19-4019. Available funds; uses; enumerated.
19-4020. Business improvement district; created; location.
19-4021. Business improvement board; membership; powers; duties.
19-4022. Board; members; terms; vacancy.
19-4023. Utility facility within district; construct or alter; approval required; when.

Section

19-4001 Repealed. Laws 1979, LB 251, § 26.

19-4002 Repealed. Laws 1979, LB 251, § 26.

19-4003 Repealed. Laws 1979, LB 251, § 26.

19-4004 Repealed. Laws 1979, LB 251, § 26.

19-4005 Repealed. Laws 1979, LB 251, § 26.

19-4006 Repealed. Laws 1979, LB 251, § 26.

19-4007 Repealed. Laws 1979, LB 251, § 26.

19-4008 Repealed. Laws 1979, LB 251, § 26.

19-4009 Repealed. Laws 1979, LB 251, § 26.

19-4010 Repealed. Laws 1979, LB 251, § 26.

19-4011 Repealed. Laws 1979, LB 251, § 26.

19-4012 Repealed. Laws 1979, LB 251, § 26.

19-4013 Repealed. Laws 1979, LB 251, § 26.

19-4014 Repealed. Laws 1979, LB 251, § 26.

19-4015 Act, how cited.

Sections 19-4015 to 19-4038 shall be known and may be cited as the Business Improvement District Act.

Source: Laws 1979, LB 251, § 1.

19-4016 Sections, how construed.

Sections 19-4015 to 19-4038 provide a separate and additional method, authority, and procedure for the matters to which it relates and does not affect

any other law relating to the same or similar subject. When proceeding under sections 19-4015 to 19-4038, their provisions only need be followed.

Source: Laws 1979, LB 251, § 2.

19-4017 Sections; purpose.

Cities of the metropolitan, primary, first, and second class in the state at present have business areas in need of improvement and development, but lack the funds with which to provide and maintain such improvements. The purpose of sections 19-4015 to 19-4038 is to provide a means by which such cities may raise the necessary funds to be used for the purpose of providing and maintaining the improvements authorized by sections 19-4015 to 19-4038.

Source: Laws 1979, LB 251, § 3.

19-4017.01 Terms, defined.

As used in sections 19-4015 to 19-4038, unless the context otherwise requires:

(1) Record owner shall mean the fee owner of real property as shown in the records of the register of deeds office in the county in which the business area is located. A contract purchaser of real property shall be considered the record owner for purposes of sections 19-4015 to 19-4038 and the only person entitled to petition pursuant to section 19-4028 or protest pursuant to section 19-4027, if the contract is recorded in the register of deeds office in the county in which the business area is located;

(2) Assessable unit shall mean front foot, square foot, equivalent front foot, or other unit of assessment established under the proposed method of assessment set forth in the resolution of intention to create a business improvement district; and

(3) Space shall mean the square foot space wherein customers, patients, clients, or other invitees are received and space from time to time used or available for use in connection with a business or profession of a user, excepting all space owned or used by political subdivisions.

Source: Laws 1983, LB 22, § 1.

19-4018 Cities; business improvement district; special assessment; business license and occupation tax; use of proceeds.

Pursuant to sections 19-4015 to 19-4038 cities of the metropolitan, primary, first, or second class may impose (1) a special assessment upon the property within a business improvement district in the city or (2) a general business license and occupation tax on businesses and users of space within a business improvement district. The proceeds or other available funds may be used for the purposes stated in section 19-4019.

Source: Laws 1979, LB 251, § 4.

19-4019 Available funds; uses; enumerated.

Any money available under section 19-4018 may be used for any one or more of the following purposes:

(1) The acquisition, construction, maintenance, and operation of public offstreet parking facilities for the benefit of the district area;

(2) Improvement of any public place or facility in the district area, including landscaping, physical improvements for decoration or security purposes, and plantings;

(3) Construction or installation of pedestrian shopping malls or plazas, sidewalks or moving sidewalks, parks, meeting and display facilities, bus stop shelters, lighting, benches or other seating furniture, sculptures, trash receptacles, shelters, fountains, skywalks, and pedestrian and vehicular overpasses and underpasses, and any useful or necessary public improvements;

(4) Leasing, acquiring, constructing, reconstructing, extending, maintaining, or repairing parking lots or parking garages, both above and below ground, or other facilities for the parking of vehicles, including the power to install such facilities in public areas, whether such areas are owned in fee or by easement, in the district area;

(5) Creation and implementation of a plan for improving the general architectural design of public areas in the district;

(6) The development of any public activities and promotion of public events, including the management and promotion and advocacy of retail trade activities or other promotional activities, in the district area;

(7) Maintenance, repair, and reconstruction of any improvements or facilities authorized by the Business Improvement District Act;

(8) Any other project or undertaking for the betterment of the public facilities in the district area, whether the project be capital or noncapital in nature;

(9) Enforcement of parking regulations and the provision of security within the district area; and

(10) Employing or contracting for personnel, including administrators for any improvement program under the act, and providing for any service as may be necessary or proper to carry out the purposes of the act.

Source: Laws 1979, LB 251, § 5; Laws 1989, LB 194, § 1.

19-4020 Business improvement district; created; location.

A business improvement district may be created as provided by sections 19-4015 to 19-4038 and shall be within the boundaries of an established business area of the city zoned for business, public, or commercial purposes.

Source: Laws 1979, LB 251, § 6; Laws 1983, LB 22, § 2.

19-4021 Business improvement board; membership; powers; duties.

The mayor, with the approval of the city council, shall appoint a business improvement board consisting of property owners, residents, business operators, or users of space within the business area to be improved. The boundaries of the business area shall be declared by resolution of the city council at or prior to the time of the appointment of the board. The board shall make recommendations to the city council for the establishment of a plan or plans for improvements in the business area. If it is found that the improvements to be included in one business area offer benefits that cannot be equitably assessed together under sections 19-4015 to 19-4038, more than one business improvement district as part of the same development plan for that business area may be proposed. The board may make recommendations to the city as to the use of

any occupation tax funds collected, and may administer such funds if so directed by the mayor and city council.

Source: Laws 1979, LB 251, § 7; Laws 1983, LB 22, § 3.

19-4022 Board; members; terms; vacancy.

The board shall consist of five or more members to serve such terms as the city council, by resolution, determines. The mayor, with the approval of the city council, shall fill any vacancy for the term vacated. A board member may serve more than one term. The board shall select from its members a chairperson and a secretary.

Source: Laws 1979, LB 251, § 8.

19-4023 Utility facility within district; construct or alter; approval required; when.

All public utilities or private companies having franchises for utilities from the city shall, before constructing any new utility facility valued in excess of five thousand dollars or substantially improving or changing existing facilities within a business improvement district, obtain approval of the mayor and city council after the mayor and city council have obtained written comments from the business improvement board to coordinate the business improvement district plan.

Source: Laws 1979, LB 251, § 9.

19-4024 Business improvement district; creation by city council; resolution of intention; contents; tax or assessment; basis.

Upon receiving the recommendation from the business improvement board, the city council, after receipt of recommendations from the planning commission if the city has a planning commission, may create one or more business improvement districts by adopting a resolution of intention to establish a district or districts. The resolution shall contain the following information:

(1) A description of the boundaries of any proposed district;

(2) The time and place of a hearing to be held by the city council to consider establishment of a district or districts;

(3) The proposed public facilities and improvements to be made or maintained within any such district; and

(4) The proposed or estimated costs for improvements and facilities within any district, and the method by which the revenue shall be raised. If a special assessment is proposed, the resolution also shall state the proposed method of assessment.

The notice of intention shall recite that the method of raising revenue shall be fair and equitable. In the use of a general occupation tax, the tax shall be based primarily on the square footage of the owner's and user's place of business. In the use of a special assessment, the assessment shall be based upon the special benefit to the property within the district.

Source: Laws 1979, LB 251, § 10; Laws 1983, LB 22, § 4.

The proper time for a choice as to what method of special assessment is to be used, if such is the route decided upon, is at the time of adoption of the creating ordinance, as set forth in section 19-4029. North Star Lodge #227, A.F. & A.M. v. City of Lincoln, 212 Neb. 236, 322 N.W.2d 419 (1982).

19-4025 Notice of hearing; manner given.

A notice of hearing under sections 19-4015 to 19-4038 shall be given by (1) one publication of the resolution of intention in a newspaper of general circulation in the city and (2) mailing a complete copy of the resolution of intention to each owner of taxable property as shown on the latest tax rolls of the county treasurer for such county. If an occupation tax is to be imposed, a copy of the resolution of intention shall also be mailed to each user of space in the proposed district. Publication and mailing shall be completed at least ten days prior to the time of hearing.

Source: Laws 1979, LB 251, § 11; Laws 1983, LB 22, § 5.

19-4026 Hearing to create a district; call by petition.

In the event that the city council has not acted to call a hearing to create a district as provided in sections 19-4015 to 19-4038, it shall do so when presented with a petition signed by the record owners of thirty percent of the assessable front footage in a business area or by the users of thirty percent of space in a business area.

Source: Laws 1979, LB 251, § 12; Laws 1983, LB 22, § 6.

19-4027 Hearing; city council; duties; protest; effect.

Whenever a hearing is held under the provisions of sections 19-4015 to 19-4038, the city council shall:

(1) Hear all protests and receive evidence for or against the proposed action;

(2) Rule upon all written protests received prior to the close of the hearing, which ruling shall be final; and

(3) Continue the hearing from time to time as the city council may deem necessary.

If a special assessment is to be used, proceedings shall terminate if written protest is made prior to the close of the hearing by the record owners of over fifty percent of the assessable units in the proposed district. If an occupation tax is to be used, proceedings shall terminate if protest is made by over fifty percent of the users of space in the proposed district.

Source: Laws 1979, LB 251, § 13; Laws 1983, LB 22, § 7.

Publicly owned property is exempt from general purpose taxation, but it is not exempt from special assessment taxation. Therefore, publicly owned front feet are not excluded in making the computations concerning assessable front footage. Lessees are not ''owners'' for purposes of protest under this section. Easley v. City of Lincoln, 213 Neb. 450, 330 N.W.2d 130 (1983).

The term ''assessable unit'' contained herein is not synonymous with the term ''front foot''; it refers, rather, to a delineation of the resulting assessments on a lot or parcel basis. North Star Lodge #227, A.F. & A.M. v. City of Lincoln, 212 Neb. 236, 322 N.W.2d 419 (1982).

19-4028 Proposed district; boundary amendment; hearing continued.

If the city council decides to change the boundaries of the proposed district, the hearing shall be continued to a time at least fifteen days after such decision and the notice shall be given as prescribed in section 19-4026, showing the boundary amendments, but no new or additional resolution of intention shall be required.

Source: Laws 1979, LB 251, § 14; Laws 1983, LB 22, § 8.

19-4029 City council; ordinance to establish district; when; contents.

The city council, following the hearing, may establish or reject any proposed district or districts. If the city council decides to establish any district, it shall adopt an ordinance to that effect. This ordinance shall contain the following information:

(1) The number, date, and title of the resolution of intention pursuant to which it was adopted;

(2) The time and place the hearing was held concerning the formation of such district;

(3) A statement that a business improvement district has been established;

(4) The purposes of the district, and the public improvements and facilities to be included in such district;

(5) The description of the boundaries of such district;

(6) A statement that the businesses and professions in the area established by the ordinance shall be subject to the general business occupation tax or that the real property in the area will be subject to the special assessment authorized by sections 19-4015 to 19-4038;

(7) The proposed method of assessment to be imposed within the district or the initial rate of the occupation tax to be imposed; and

(8) Any penalties to be imposed for failure to pay the tax or special assessment.

Source: Laws 1979, LB 251, § 15; Laws 1983, LB 22, § 9.

19-4030 Business improvement district; special assessment; purpose; notice; appeal; lien.

A city may levy a special assessment against the real estate located in such district, to the extent of the special benefit thereto, for the purpose of paying all or any part of the total costs and expenses of performing any authorized work, except maintenance, repair, and reconstruction costs, within such district. The amount of each special assessment shall be determined by the city council sitting as a board of equalization. Assessments shall be levied in accordance with the method of assessment proposed in the ordinance creating the district. If the city council finds that the proposed method of assessment does not provide a fair and equitable method of apportioning costs, then it may assess the costs under such method as the city council finds to be fair and equitable. Notice of a hearing on any special assessments to be levied under sections 19-4015 to 19-4038 shall be given to the landowners in such district by publication of the description of the land, the amount proposed to be assessed, and the general purpose for which such assessment is to be made one time each week for three weeks in a daily or weekly newspaper of general circulation published in the city. The notice shall provide the date, time, and place of hearing to hear any objections or protests by landowners in the district as to the amount of assessment made against their land. A direct appeal to the district court of the county in which such city is located may be taken from the decision of the city council in the same manner and under like terms and conditions as appeals may be taken from the amount of special assessments levied in street improvement districts in such city as now provided by law. All special assessments levied under sections 19-4015 to 19-4038 shall be liens on the property and shall be certified for collection and collected in the same manner as special

assessments for improvements and street improvement districts of the city are collected.

Source: Laws 1979, LB 251, § 16; Laws 1983, LB 22, § 10.

19-4031 District; general business occupation tax; purpose; notice; appeal; collection; basis.

(1) In addition to or in place of the special assessments authorized by sections 19-4015 to 19-4038, a city may levy a general business occupation tax upon the businesses and users of space within a district established for acquiring, constructing, maintaining or operating public offstreet parking facilities and providing in connection therewith other public improvements and facilities authorized by sections 19-4015 to 19-4038, for the purpose of paying all or any part of the total cost and expenses of any authorized improvement or facility within such district. Notice of a hearing on any such tax levied under sections 19-4015 to 19-4038 shall be given to the businesses and users of space of such districts, and appeals may be taken, all in the manner provided in section 19-4030.

(2) For the purposes of the tax to be imposed under this section, the city council may make a reasonable classification of businesses or users of space. The collection of a tax imposed pursuant to this section shall be made and enforced in such a manner as the city council shall by ordinance determine to produce the required revenue. The city council may provide that failure to pay the tax imposed pursuant to this section shall constitute a violation of the ordinance and subject the violator to a fine or other punishment as provided by ordinance.

Source: Laws 1979, LB 251, § 17; Laws 1983, LB 22, § 11.

19-4032 District; additional assessment or levy; when; procedure.

If, subsequent to the levy of taxes or assessments, the use of any parcel of land shall change so that, had the new use existed at the time of making such levy, the assessment or levy on such parcel would have been higher than the levy or assessment actually made, an additional assessment or levy may be made on such parcel by the city council taking into consideration the new and changed use of the property. Reassessments or changes in the rate of levy of assessments or taxes may be made by the city council after notice and hearing as provided in section 19-4030. The city council shall adopt a resolution of intention to change the rate of levy at least fifteen days prior to the hearing required for changes. This resolution shall specify the proposed change and shall give the time and place of the hearing.

Source: Laws 1979, LB 251, § 18.

19-4033 Assessments or taxes; limitations; effect.

The total amount of assessments or general business occupation taxes levied under sections 19-4015 to 19-4038 shall not exceed the total costs and expenses of performing the authorized work. The levy of any additional assessment or tax shall not reduce or affect in any manner the assessments previously levied. The assessments or taxes levied must be for the purposes specified in the ordinances and the proceeds shall not be used for any other purpose.

Source: Laws 1979, LB 251, § 19; Laws 1983, LB 22, § 12.

19-4034 Business improvement district; special assessment or business tax; maintenance, repair, or reconstruction; levy; procedure.

A city may levy a general business occupation tax, or a special assessment against the real estate located in a district to the extent of special benefit to such real estate, for the purpose of paying all or any part of the cost of maintenance, repair, and reconstruction, including utility costs of any improvement or facility in the district. Districts created for taxation or assessment of maintenance, repair, and reconstruction costs, including utility costs of improvements or facilities which are authorized by sections 19-4015 to 19-4038, but which were not acquired or constructed pursuant to sections 19-4015 to 19-4038, may be taxed or assessed as provided in sections 19-4015 to 19-4038. Any occupation tax levied under this section shall be limited to those improvements and facilities authorized by section 19-4030. The city council may levy such taxes or assessments under either of the following methods:

(1) The city council, sitting as a board of equalization, may, not more frequently than annually, determine the costs of maintenance or repair, and reconstruction, of a facility. Such costs shall be either assessed to the real estate located in such district in accordance with the proposed method of assessment, or taxed against the businesses and users of space in the district, whichever may be applicable as determined by the ordinance creating the district. However, if the city council finds that the method of assessment proposed in the ordinance creating the district does not provide a fair and equitable method of apportioning such costs, then it may assess the costs under such method as the city council finds to be fair and equitable. At the hearing on such taxes or assessments, objections may be made to the total cost and the proposed allocation of such costs among the parcels of real estate or businesses in such district; or

(2) After notice is given to the owners or businesses as provided in section 19-4030 the city council may establish and may change from time to time, the percentage of such costs for maintenance, repair, and reconstruction which each parcel of real estate or each business or user of space in any district shall pay. The city council shall annually determine the total amount of such costs for each period since costs were last taxed or assessed, and shall, after a hearing, tax or assess such costs to the real estate in the district in accordance with the percentages previously established at such hearing. Notice of such hearing shall be given as provided in section 19-4030 and shall state the total costs and percentage to be taxed or assessed to each parcel of real estate. Unless objections are filed with the city clerk at least five days before the hearing, all objections to the amount of total costs and the assessment percentages should be deemed to have been waived and the assessments shall be levied as stated in such notice except that the city council may reduce any assessment percentage.

Source: Laws 1979, LB 251, § 20; Laws 1983, LB 22, § 13.

19-4035 District; disestablish; procedure.

The city council may disestablish a district by ordinance after a hearing before the city council. The city council shall adopt a resolution of intention to disestablish the area at least fifteen days prior to the hearing required by this section. The resolution shall give the time and place of the hearing.

Source: Laws 1979, LB 251, § 21.

19-4036 Disestablished district; assets; disposition.

Upon disestablishment of a district, any proceeds of the tax or the assessment, or assets acquired with such proceeds, shall be subject to disposition as the city council shall determine.

Source: Laws 1979, LB 251, § 22.

19-4037 Funds and grants; use.

The city is authorized to receive, administer, and disburse donated funds or grants of federal or state funds for the purposes of and in the manner authorized by sections 19-4015 to 19-4038.

Source: Laws 1979, LB 251, § 23.

19-4038 Districts created prior to May 23, 1979; governed by sections.

Any business improvement district or any downtown improvement and parking district created prior to May 23, 1979, pursuant to sections 19-3401 to 19-3420 or 19-4001 to 19-4014, shall continue in existence and shall hereafter be governed by sections 19-4015 to 19-4038.

Source: Laws 1979, LB 251, § 24.

ARTICLE 41

DISPOSAL SITES

(Applicable to cities of the metropolitan, primary, or first class.)

Section

19-4101 Repealed. Laws 1992, LB 1257, § 105.

19-4102 Repealed. Laws 1992, LB 1257, § 105.

19-4103 Repealed. Laws 1992, LB 1257, § 105.

19-4104 Repealed. Laws 1992, LB 1257, § 105.

19-4105 Repealed. Laws 1992, LB 1257, § 105.

19-4106 Repealed. Laws 1992, LB 1257, § 105.

19-4107 Repealed. Laws 1992, LB 1257, § 105.

19-4108 Repealed. Laws 1992, LB 1257, § 105.

19-4109 Repealed. Laws 1992, LB 1257, § 105.

19-4110 Repealed. Laws 1992, LB 1257, § 105.

19-4111 Repealed. Laws 1992, LB 1257, § 105.

19-4112 Repealed. Laws 1992, LB 1257, § 105.

19-4113 Repealed. Laws 1992, LB 1257, § 105.

19-4114 Repealed. Laws 1992, LB 1257, § 105.

19-4115 Repealed. Laws 1992, LB 1257, § 105.

19-4116 Repealed. Laws 1992, LB 1257, § 105.

19-4117 Repealed. Laws 1992, LB 1257, § 105.

19-4118 Repealed. Laws 1992, LB 1257, § 105.

19-4119 Repealed. Laws 1992, LB 1257, § 105.

19-4119.01 Repealed. Laws 1992, LB 1257, § 105.

19-4120 Repealed. Laws 1992, LB 1257, § 105.

19-4121 Repealed. Laws 1992, LB 1257, § 105.

ARTICLE 42
RECALL PROCEDURES

Section
19-4201. Repealed. Laws 1984, LB 975, § 14.
19-4202. Repealed. Laws 1984, LB 975, § 14.
19-4203. Repealed. Laws 1984, LB 975, § 14.
19-4204. Repealed. Laws 1984, LB 975, § 14.
19-4205. Repealed. Laws 1984, LB 975, § 14.
19-4206. Repealed. Laws 1984, LB 975, § 14.
19-4207. Repealed. Laws 1984, LB 975, § 14.
19-4208. Repealed. Laws 1984, LB 975, § 14.
19-4209. Repealed. Laws 1984, LB 975, § 14.
19-4210. Repealed. Laws 1984, LB 975, § 14.
19-4211. Repealed. Laws 1984, LB 975, § 14.

19-4201 Repealed. Laws 1984, LB 975, § 14.

19-4202 Repealed. Laws 1984, LB 975, § 14.

19-4203 Repealed. Laws 1984, LB 975, § 14.

19-4204 Repealed. Laws 1984, LB 975, § 14.

19-4205 Repealed. Laws 1984, LB 975, § 14.

19-4206 Repealed. Laws 1984, LB 975, § 14.

19-4207 Repealed. Laws 1984, LB 975, § 14.

19-4208 Repealed. Laws 1984, LB 975, § 14.

19-4209 Repealed. Laws 1984, LB 975, § 14.

19-4210 Repealed. Laws 1984, LB 975, § 14.

19-4211 Repealed. Laws 1984, LB 975, § 14.

ARTICLE 43

PUBLIC STREETS AND SIDEWALKS
(Applicable to all cities.)

Section
19-4301. Public streets and sidewalks; sale of services or goods; permitted; closure; conditions.

19-4301 Public streets and sidewalks; sale of services or goods; permitted; closure; conditions.

(1) The city council of any city may permit the public streets and sidewalks within such city to be occupied and used under a lease, license, or other permission by a person, business, or others for the sale of services or goods and may permit the placement of nonpermanent sidewalk cafes, tables, chairs, benches, and other temporary improvements from which such sales can be transacted on the public streets and sidewalks.

(2) In addition to subsection (1) of this section, the city council of any city of the primary class may permit public streets and sidewalks to be closed and a fee to be charged for access to such streets and sidewalks if the following conditions have been met:

(a) The person seeking such permission is a tax-exempt nonprofit or charitable organization exempt from taxation by the federal government;

(b) The event for which a street or sidewalk is to be closed is conducted by and for the benefit of such nonprofit or charitable organization; and

(c) The nonprofit or charitable organization has obtained written consent to close such street or sidewalk for the duration of the permitted event from all of the owners of any land or lots abutting on the street or sidewalk to be closed.

Source: Laws 1980, LB 848, § 23; Laws 1990, LB 1076, § 1.

ARTICLE 44

PLANNED UNIT DEVELOPMENT
(Applicable to cities of the metropolitan, primary, or first class.)

Section
19-4401. Planned unit development ordinance; authorized; conditions.

19-4401 Planned unit development ordinance; authorized; conditions.

(1) Notwithstanding any provisions of Chapter 14, article 4, Chapter 15, article 9, Chapter 19, article 9, or of any home rule charter to the contrary, every metropolitan-, primary-, and first-class city shall have the power to

include within its zoning ordinance, provisions authorizing and regulating planned unit developments within such city or within the zoning jurisdiction of such city, except such cities shall not have authority to impose such power over organized cities or villages within the zoning jurisdiction of such cities. As used in this section, planned unit development shall include any development of a parcel of land or an aggregation of contiguous parcels of land to be developed as a single project which proposes density transfers, density increases, and mixing of land uses, or any combination thereof, based upon the application of site planning criteria. The purpose of such ordinance shall be to permit flexibility in the regulation of land development, to encourage innovation in land use and variety in design, layout, and type of structures constructed, to achieve economy and efficiency in the use of land, natural resources, energy, and the provision of public services and utilities, to encourage the preservation and provision of useful open space, and to provide improved housing, employment, or shopping opportunities particularly suited to the needs of an area.

(2) An ordinance authorizing and regulating planned unit developments shall establish criteria relating to the review of proposed planned unit developments to ensure that the land use or activity proposed through a planned unit development shall be compatible with adjacent uses of land, the capacities of public services and utilities affected by such planned unit development, and to ensure that the approval of such planned unit development is consistent with the public health, safety, and general welfare of the city, and is in accordance with the comprehensive plan.

(3) Within a planned unit development, regulations relating to the use of land, including permitted uses, lot sizes, setbacks, height limits, required facilities, buffers, open spaces, roadway and parking design, and land-use density shall be determined in accordance with the planned unit development regulations specified in the zoning ordinance. The planned unit development regulations need not be uniform with regard to each type of land use.

(4) The approval of planned unit developments, as authorized under a planned unit development ordinance, shall be generally similar to the procedures established for the approval of zone changes. In approving any planned unit development, a city may, either as a condition of the ordinance approving a planned unit development, by covenant, by separate agreement, or otherwise, impose reasonable conditions as deemed necessary to ensure that a planned unit development shall be compatible with adjacent uses of land, will not overburden public services and facilities, and will not be detrimental to the public health, safety, and welfare. Such conditions or agreements may provide for dedications of land for public purposes.

Source: Laws 1983, LB 135, § 1.

ARTICLE 45

SPECIAL ASSESSMENTS

(Applicable to cities of the metropolitan, primary, or first class.)

Section
19-4501. Transferred to section 18-1216.

19-4501 Transferred to section 18-1216.

ARTICLE 46

MUNICIPAL NATURAL GAS

(Applicable to all except cities of the metropolitan class.)

(a) MUNICIPAL NATURAL GAS REGULATION ACT

Section
19-4601. Repealed. Laws 2003, LB 790, § 77.
19-4602. Repealed. Laws 2003, LB 790, § 77.
19-4603. Repealed. Laws 2003, LB 790, § 77.
19-4603.01. Repealed. Laws 2003, LB 790, § 77.
19-4604. Repealed. Laws 2003, LB 790, § 77.
19-4605. Repealed. Laws 2003, LB 790, § 77.
19-4606. Repealed. Laws 2003, LB 790, § 77.
19-4607. Repealed. Laws 2003, LB 790, § 77.
19-4608. Repealed. Laws 2003, LB 790, § 77.
19-4609. Repealed. Laws 2003, LB 790, § 77.
19-4610. Repealed. Laws 2003, LB 790, § 77.
19-4611. Repealed. Laws 2003, LB 790, § 77.
19-4612. Repealed. Laws 2003, LB 790, § 77.
19-4613. Repealed. Laws 2003, LB 790, § 77.
19-4614. Repealed. Laws 2003, LB 790, § 77.
19-4615. Repealed. Laws 2003, LB 790, § 77.
19-4616. Repealed. Laws 2003, LB 790, § 77.
19-4617. Repealed. Laws 2003, LB 790, § 77.
19-4618. Repealed. Laws 2003, LB 790, § 77.
19-4618.01. Repealed. Laws 2003, LB 790, § 77.
19-4618.02. Repealed. Laws 2003, LB 790, § 77.
19-4618.03. Repealed. Laws 2003, LB 790, § 77.
19-4618.04. Repealed. Laws 2003, LB 790, § 77.
19-4619. Repealed. Laws 2003, LB 790, § 77.
19-4620. Repealed. Laws 2003, LB 790, § 77.
19-4621. Repealed. Laws 2003, LB 790, § 77.
19-4622. Repealed. Laws 2003, LB 790, § 77.
19-4623. Repealed. Laws 2003, LB 790, § 77.

(b) MUNICIPAL NATURAL GAS SYSTEM CONDEMNATION ACT

19-4624. Act, how cited.
19-4625. Eminent domain authorized.
19-4626. Act; applicability.
19-4627. Terms, defined.
19-4628. Resolution of intent.
19-4629. Resolution of intent; contents.
19-4630. Resolution of intent; public hearing.
19-4631. Condemnation motion.
19-4632. Court of condemnation; establishment.
19-4633. Court of condemnation; procedure.
19-4634. Court of condemnation; powers and duties; costs.
19-4635. Court of condemnation; finding of value; procedure; appeal; abandonment; when.
19-4636. Appeal.
19-4637. Voter approval.
19-4638. Voter approval; effect.
19-4639. Voter approval; time restrictions.
19-4640. Bonds authorized.
19-4641. Condemnation; relinquishment authorized.
19-4642. Contract authorized.
19-4643. Contract; contents.
19-4644. Contract; review by Public Service Commission.
19-4645. Contract; effect.

(a) MUNICIPAL NATURAL GAS REGULATION ACT

19-4601 Repealed. Laws 2003, LB 790, § 77.

19-4602 Repealed. Laws 2003, LB 790, § 77.

19-4603 Repealed. Laws 2003, LB 790, § 77.

19-4603.01 Repealed. Laws 2003, LB 790, § 77.

19-4604 Repealed. Laws 2003, LB 790, § 77.

19-4605 Repealed. Laws 2003, LB 790, § 77.

19-4606 Repealed. Laws 2003, LB 790, § 77.

19-4607 Repealed. Laws 2003, LB 790, § 77.

19-4608 Repealed. Laws 2003, LB 790, § 77.

19-4609 Repealed. Laws 2003, LB 790, § 77.

19-4610 Repealed. Laws 2003, LB 790, § 77.

19-4611 Repealed. Laws 2003, LB 790, § 77.

19-4612 Repealed. Laws 2003, LB 790, § 77.

19-4613 Repealed. Laws 2003, LB 790, § 77.

19-4614 Repealed. Laws 2003, LB 790, § 77.

19-4615 Repealed. Laws 2003, LB 790, § 77.

19-4616 Repealed. Laws 2003, LB 790, § 77.

19-4617 Repealed. Laws 2003, LB 790, § 77.

19-4618 Repealed. Laws 2003, LB 790, § 77.

19-4618.01 Repealed. Laws 2003, LB 790, § 77.

19-4618.02 Repealed. Laws 2003, LB 790, § 77.

19-4618.03 Repealed. Laws 2003, LB 790, § 77.

19-4618.04 Repealed. Laws 2003, LB 790, § 77.

19-4619 Repealed. Laws 2003, LB 790, § 77.

19-4620 Repealed. Laws 2003, LB 790, § 77.

19-4621 Repealed. Laws 2003, LB 790, § 77.

19-4622 Repealed. Laws 2003, LB 790, § 77.

19-4623 Repealed. Laws 2003, LB 790, § 77.

(b) MUNICIPAL NATURAL GAS SYSTEM CONDEMNATION ACT

19-4624 Act, how cited.

Sections 19-4624 to 19-4645 shall be known and may be cited as the Municipal Natural Gas System Condemnation Act.

Source: Laws 2002, LB 384, § 1.

19-4625 Eminent domain authorized.

A city may acquire and appropriate a gas system through the exercise of the power of eminent domain if such power is exercised in the manner specified in and subject to the Municipal Natural Gas System Condemnation Act.

Source: Laws 2002, LB 384, § 2.

19-4626 Act; applicability.

(1) A city may condemn the property of a utility which constitutes a portion of a gas system without complying with the Municipal Natural Gas System Condemnation Act if the condemnation is necessary for the public purpose of acquiring an easement or right-of-way across the property of the utility or is for the purpose of acquiring a portion of the gas system for a public use unrelated to the provision of natural gas service.

(2) Nothing in the act shall be construed to govern or affect the manner in which a city which owns and operates its own gas system condemns the property of a utility when such property is brought within the corporate boundaries of the city by annexation.

Source: Laws 2002, LB 384, § 3.

19-4627 Terms, defined.

For purposes of the Municipal Natural Gas System Condemnation Act:

(1) City means a city of the primary class, city of the first class, city of the second class, or village;

(2) Commission means the Public Service Commission;

(3) Gas system means all or any portion of a gas plant or a gas system, including a natural or bottled gas plant, gas distribution system, or gas pipelines, located or operating within or partly within and partly without a city, together with real and personal property needed or useful in connection therewith, if the main part of the works, plant, or system is located within the city; and

(4) Utility means an investor-owned utility owning, maintaining, and operating a gas system within a city.

Source: Laws 2002, LB 384, § 4.

19-4628 Resolution of intent.

A city proposing to acquire a gas system through the exercise of the power of eminent domain shall initiate the process by ordering the preparation of a resolution of intent to pursue condemnation of the gas system in accordance with the requirements of the Municipal Natural Gas System Condemnation Act by a vote of a majority of the members of the governing body of the city.

Source: Laws 2002, LB 384, § 5.

19-4629 Resolution of intent; contents.

(1) The resolution of intent shall describe the property subject to the proposed condemnation, including the types of property and facilities to be subject to the condemnation and the extent and amount of property to be appropriated. The resolution of intent shall set forth one or more of the following:

(a) A description of the acts and omissions of the utility regarding natural gas safety which the city believes have created or may create a material threat to

the health and safety of the public in the city and a description of the nature of the threat;

(b) A description of the acts and omissions of the utility regarding the terms, conditions, and quality of natural gas service to natural gas ratepayers in the city which the city believes fail to meet generally accepted standards of customer service within the natural gas industry;

(c) A comparison of the rates for natural gas charged by the utility to ratepayers in the city and of the rates charged to similarly situated ratepayers in comparably sized cities in Nebraska and neighboring states which are served by the same or different utilities, which comparison the city believes shows that the rates charged in the city are excessive; or

(d) A description of recent or contemporaneous events or disclosures regarding the utility, including, but not limited to, changes in ownership, corporate structure, financial stability, or debt rating or any other factor which the city believes indicates financial instability in the utility which may materially impair its ability to maintain appropriate levels of safety and consumer service in the city.

(2) If the resolution of intent contains provisions as set out in subdivision (1)(a) or (b) of this section, the resolution shall describe the efforts by the city to inform the utility of the utility's acts or omissions regarding safety or service and shall describe the opportunities afforded the utility to remedy the stated defects.

(3) The resolution of intent shall not contain any provision regarding nor make any references to any expected or anticipated revenue to be derived by the city in consequence of the city's condemnation or operation of the gas system.

Source: Laws 2002, LB 384, § 6.

19-4630 Resolution of intent; public hearing.

(1) The resolution of intent to pursue condemnation shall be presented to the governing body of the city at a regular meeting of such governing body. At that meeting the governing body may adopt the resolution of intent and, if it does so, shall set a time at least forty-five days after the date of the meeting at which the resolution of intent was adopted at which time the governing body of the city shall hold a public hearing.

(2) At the public hearing, the sole item of business to be conducted shall be the public hearing on the resolution of intent at which the public shall be permitted to comment on the proposed condemnation, the utility shall be permitted to respond to the statements set out in the resolution of intent and any comments made at the public hearing, and the governing body may act as provided in section 19-4631.

(3) The clerk of the city shall transmit a copy of the resolution of intent and notice of the date and time of the public hearing to the utility by United States registered mail with signature confirmation within seven days after the meeting at which the resolution of intent was adopted. At least thirty days prior to the public hearing, the city shall publish notice of the time and place of the public hearing and a summary of the resolution of intent in a legal newspaper published in or of general circulation in the city.

(4) The utility may present to the city a description of portions of the gas system which (a) are not described as part of the gas system being condemned by the city and (b) are served through the town border station of the city. The utility may require the city to include in its description of the gas system being condemned any or all of those portions of the system if the proposed condemnation would sever those portions of the system from the utility's distribution facilities and would require the utility to create new infrastructure to link these portions to its existing delivery system outside the city. If the utility chooses to require the city to include additional portions of the gas system in the description of the property being condemned, it shall do so prior to the adjournment of the public hearing.

Source: Laws 2002, LB 384, § 7.

19-4631 Condemnation motion.

After the public hearing provided for in section 19-4630, the governing body of the city, by majority vote of its members, may vote to exercise the power of eminent domain and condemn the gas system or such portion thereof as described in the motion. The motion shall identify fully and accurately the property subject to the condemnation.

Source: Laws 2002, LB 384, § 8.

19-4632 Court of condemnation; establishment.

Following the adoption of the motion, including an override of any veto, if necessary, the clerk of the city shall transmit to the Chief Justice of the Supreme Court notice of the decision of the city to pursue condemnation of the gas system. The Supreme Court shall, within thirty days after the receipt of such notice, appoint three judges of the district court from three of the judicial districts of the state to constitute a court of condemnation to ascertain and find the value of the gas system being taken. The Supreme Court shall enter an order requiring the judges to attend as a court of condemnation at the county seat of the county in which the city is located, within such time as may be stated in the order, except upon stipulation by all necessary parties as to the value of the gas system filed with the Supreme Court prior to such date. The judges shall attend as ordered and at the first meeting shall select a presiding judge, organize, and proceed with the court's duties. The court may adjourn from time to time and shall fix a time for the appearance before it of all such corporations or persons as the court may deem necessary to be made parties to such condemnation proceedings or which the city or the utility may desire to have made a party to the proceedings. If such time of appearance shall occur after any proceedings have begun, the proceedings shall be reviewed by the court, as it may direct, to give all parties full opportunity to be heard. All corporations or persons, including all mortgagees, bondholders, trustees for bondholders, leaseholders, or other parties or persons claiming any interest in or lien upon the gas system, may be made parties to the proceedings. All parties shall be served with notice of the proceedings and the time and place of the meeting of the court of condemnation in the same manner and for such length of time as the service of a summons in cases begun in the district court, either by personal service or service by publication, and actual personal service of

notice within or without the state shall supersede the necessity of notice by publication.

Source: Laws 2002, LB 384, § 9.

19-4633 Court of condemnation; procedure.

In all proceedings before it, the court of condemnation shall appoint a reporter of its proceedings who shall report and preserve all evidence introduced before it. The clerk of the district court, in the county where the city is located, shall attend upon the court of condemnation and perform the duties of the clerk thereof, as the court of condemnation may direct. The sheriff of the county or any of his or her deputies shall attend upon the court and shall have power to serve summonses, subpoenas, and all other orders or papers ordered to be served by the court. In case of a vacancy on the court, the vacancy shall be filled by the Supreme Court if the vacancy occurs while the Supreme Court is in session, and if it occurs while the Supreme Court is not in session, then by the Chief Justice. The judges constituting the court of condemnation shall be paid by the city a per diem for their services in an amount to be established by rule of the Supreme Court and the city shall pay their necessary traveling expenses, accommodation bills, and all other necessary expenses incurred while in attendance upon the sittings of the court of condemnation, with reimbursement for expenses to be made as provided in sections 81-1174 to 81-1177. The city shall pay the reporter that is appointed by the court the amount that is set by the court. The sheriff shall serve all summonses, subpoenas, or other orders or papers ordered issued or served by the court of condemnation at the same rate and compensation for which he or she serves like papers issued by the district court, but shall account to the county for all compensation as required of him or her under the law governing his or her duties as sheriff.

Source: Laws 2002, LB 384, § 10.

19-4634 Court of condemnation; powers and duties; costs.

(1) In ascertaining the value of the gas system, the court of condemnation shall have full power to summon witnesses, administer oaths, take evidence, order the taking of depositions, and require the production of any and all books and papers deemed necessary for a full investigation and ascertainment of the value of any portion of the gas system. When part of the gas system appropriated under the Municipal Natural Gas System Condemnation Act extends beyond the territory within which the city exercising the power of eminent domain has a right to operate the gas system, the court of condemnation, in determining the damages caused by the appropriation, shall take into consideration the fact that the portion of the gas system beyond that territory is being detached and not appropriated by the city, and the court of condemnation shall award damages by reason of the detachment and the destruction in value and usefulness of the detached and unappropriated property as it will remain and be left after the detachment and appropriation. The court shall have all the necessary powers and perform all the necessary duties in the condemnation and ascertainment of the value and in making an award of the value of the gas system.

(2) The court of condemnation shall have power to apportion the costs of the proceedings before it between the city and the utility and the city shall provide for and pay the costs as ordered by the court. The city shall make provisions for

the necessary funds and expenses to carry on the proceedings of the court while the proceedings are in progress. If the governing body of the city elects to abandon the condemnation proceedings, the city shall pay all the costs made before the court.

(3) If the services of expert witnesses or attorneys are secured by the utility, their fees or compensation as billed to the utility are to be taxed and paid as costs by the city to the extent that the court determines that the fees and compensation sought (a) reflect the prevailing industry or professional charges for such services in cases of the size involved in the condemnation and (b) were reasonably necessary to a just and accurate determination of the value of the gas system. The costs of any appeal shall be adjudged against the party defeated in the appeal in the same degree and manner as is done under the general court practice relating to appellate proceedings.

Source: Laws 2002, LB 384, § 11.

19-4635 Court of condemnation; finding of value; procedure; appeal; abandonment; when.

(1) Upon the determination and filing of a finding of the value of the gas system by the court of condemnation, the city shall have the right and power, by resolution adopted by a majority of the members of its governing body, to elect to abandon the proceedings to acquire the gas system by the exercise of the power of eminent domain.

(2) If the city (a) does not elect to abandon within ninety days after the finding and filing of value or (b) formally notifies the utility by United States registered mail with signature confirmation that its governing body has voted to proceed with the condemnation, the utility owning the gas system may appeal from the finding of value and award by the court of condemnation to the district court.

(3) The appeal shall be made by filing with the city clerk within twenty days after (a) the expiration of the time given the city to exercise its rights of abandonment or (b) the date of the receipt of the notice of the city's intent to proceed with condemnation, a bond to be approved by the court of condemnation, conditioned for the payment of all costs which may be made on any appeal, and by filing in the district court, within ninety days after such bond is filed, a transcript of the proceedings before the court of condemnation, including the evidence taken before it, certified by the clerk, reporter, and judges of the court of condemnation. The appeal in the district court shall be tried and determined upon the pleadings, proceedings, and evidence in the transcript.

(4) Notwithstanding the provisions of subsection (1) of this section, the city may abandon the proceedings to acquire the gas system by the exercise of the power of eminent domain at any time prior to taking physical possession of the gas system.

Source: Laws 2002, LB 384, § 12.

19-4636 Appeal.

Upon the hearing of the appeal in the district court, judgment shall be pronounced, as in ordinary cases, for the value of the gas system. The city or utility may appeal the judgment to the Supreme Court. All actions and proceedings under the Municipal Natural Gas System Condemnation Act which are

heard by the district court or the Supreme Court shall be expedited for hearing and decision by the appropriate court as soon as the issues and parties are properly before such court. Such proceedings and actions shall be preferred over all other civil cases irrespective of their position on the calendar.

Source: Laws 2002, LB 384, § 13.

19-4637 Voter approval.

(1) A city shall not appropriate a gas system through the exercise of the power of eminent domain without the approval of the registered voters of the city as provided in the Municipal Natural Gas System Condemnation Act.

(2) At such time as (a) the court of condemnation has finally determined the value of the gas system and no appeal has been perfected to the district court from that determination by the city or the utility, (b) the district court has pronounced its final judgment on the value of the gas system, and neither the utility or city has perfected an appeal to the Supreme Court from such judgment, or (c) the Supreme Court has pronounced its final judgment on the value of the gas system, the governing body of the city may submit to the registered voters of the city at any general or special city election the question of whether the city should acquire the gas system by the exercise of the power of eminent domain at the price established by the court of condemnation, the district court, or the Supreme Court as the case may be. The ballot language shall describe the property to be acquired and the interest in the property being sought and shall recite the cost of the acquisition as adjudged by the court establishing the value of the gas system. The ballot question shall be in the following form:

Shall the city of (name of city) acquire by the exercise of the power of eminent domain the gas system currently owned by (name of utility) at a total cost of (set out the total dollar amount to be awarded to the utility as determined by the court of condemnation, the district court, or the Supreme Court as the case may be): ....Yes ....No

(3) The city shall submit the question to the registered voters in the manner prescribed in the Election Act. The question may be placed before the registered voters of the city at any general or special city election called for the purpose and may be submitted in connection with any city special election called for any other purpose. The votes cast on the question shall be canvassed and the result found and declared as prescribed in the Election Act.

Source: Laws 2002, LB 384, § 14.

Cross References

Election Act, see section 32-101.

19-4638 Voter approval; effect.

If the election at which the question is submitted is a special election and sixty percent of the votes cast upon such proposition are in favor, or if the election at which the question is submitted is a general election and a majority of the votes cast upon such proposition are in favor, then the officer possessing the power and duty to ascertain and declare the result of the election shall certify the result immediately to the governing body of the city. The governing body of the city may then proceed to tender the amount of the value and award made by the court of condemnation, district court, or the Supreme Court to the

utility owning the gas system and shall have the right and power to take immediate possession of the gas system upon the tender.

Source: Laws 2002, LB 384, § 15.

19-4639 Voter approval; time restrictions.

If the governing body of the city abandons proceedings for the acquisition of the gas system at any time prior to taking possession of the gas system or the issue of acquiring the gas system by the exercise of the power of eminent domain has been submitted to and not approved by the registered voters of the city, the city shall not initiate a new proceeding for the acquisition of the gas system until twenty-four months have elapsed after the date proceedings were abandoned or after the date of the election at which the question was not approved by the registered voters of the city.

Source: Laws 2002, LB 384, § 16.

19-4640 Bonds authorized.

Following (1) the completion or dismissal of all appeals and upon a final judgment being pronounced in the case and (2) the approval of the voters to condemn the gas system at the election provided for in section 19-4637, the governing body of the city may issue and sell bonds of the city to pay the amount of the value of the gas system set out in the award and any other obligations of the city arising from the condemnation including, but not limited to, acquisitions costs, fees, court costs, and related expenses. Such bonds may be issued and sold without an additional vote of the registered voters of the city.

Source: Laws 2002, LB 384, § 17.

19-4641 Condemnation; relinquishment authorized.

If a utility proposes to (1) construct a gas system in a city for the first time, (2) within an eighteen-month period, reconstruct or renovate a portion of a gas system in a city or expand the gas system in a city over an area equivalent to twenty percent or more of the area of the city being served by the utility, or (3) within an eighteen-month period, construct new facilities, improvements, or upgrades to an existing gas system to enhance service to customers or increase efficiency if the costs of making such improvements equal or exceed twenty percent of the estimated net depreciated cost of the gas system in the city prior to the addition of such improvements, the city may enter into a binding and enforceable contract as provided in sections 19-4642 to 19-4645 with the utility to relinquish its right to condemn the gas system for an expressed period of time or for a period of time determinable by formula set out in the contract.

Source: Laws 2002, LB 384, § 18.

19-4642 Contract authorized.

If the utility seeks to pursue a qualifying project as specified in section 19-4641, it may negotiate a contract with the city in which the city, in consideration of the utility's promise to provide, expand, or improve natural gas service to the citizens of the city at reasonable rates, with safeguards for public health and safety, and with appropriate standards for service, agrees to relinquish its right to condemn the gas system for a period of time sufficient to

enable the utility to recover the reasonable costs of the project, but not to exceed such period.

Source: Laws 2002, LB 384, § 19.

19-4643 Contract; contents.

A contract entered into under section 19-4641 shall include provisions specifying:

(1) The nature of the qualifying project and the costs involved in its completion;

(2) The standards of safety to be applied to the gas system during the construction and following the completion of the project;

(3) Any terms and conditions of natural gas service to customers in the city deemed material to the contract by the city and the utility;

(4) The period of time necessary for the utility to recover the reasonable cost of the project, during which time the city relinquishes its right to condemn the gas system expressed either as a set period of time or as a period of time to expire upon the occurrence of a specified condition; and

(5) Any other provisions agreed by the city and the utility to be material to the contract.

Source: Laws 2002, LB 384, § 20.

19-4644 Contract; review by Public Service Commission.

(1) A city and a utility shall not formally enter into a contract under section 19-4641 until the contract has been reviewed and approved by the commission.

(2) Upon completion of negotiations for the contract, the city and utility shall jointly submit the contract for review by the commission.

(3) The commission shall, following the submission of the contract and any supporting documentation requested by the commission, schedule a public hearing to be convened in the city at which the city and utility may present any additional information and respond to questions or inquiries by the commission and at which the public may comment upon the terms and conditions of the contract. The hearing may be recessed and reconvened in the city or at any other location at the discretion of the commission.

(4) The commission shall review the contract to determine (a) the accuracy of its factual representations and calculations, (b) the reasonableness of its terms and conditions, (c) that the disclosure of material information by the city or utility regarding the contract has been full, complete, accurate, and mutual, and (d) that the contract will, if entered into, further the public interest of the city in adequate and safe natural gas service.

(5) Following its review, the commission shall, within one hundred twenty days after the date of the submission to it of the contract, approve the contract, recommend amendments to the contract to conform it to the requirements of sections 19-4641 to 19-4645, or deny approval of the contract. If the commission recommends amendments, the city and utility may adopt the amendments or renegotiate provisions of the contract and submit the amended contract for additional commission review. If the commission recommends amendments or denies approval of the contract, the city and utility may stipulate to additional

time beyond the one hundred twenty days for the commission to further review amendments to or renegotiate provisions of the contract.

(6) When the commission approves the contract, the city and utility may formally enter into the contract.

(7) The commission may adopt and promulgate any rules or regulations necessary for the administration of its duties and responsibilities pursuant to sections 19-4641 to 19-4645.

Source: Laws 2002, LB 384, § 21.

19-4645 Contract; effect.

(1) Except as provided in subsection (2) or (3) of this section, a contract between a city and a utility entered into under sections 19-4641 to 19-4645 shall bar the city from initiating condemnation proceedings during the period provided for in the contract.

(2) If the utility, by act or omission, breaches the contract, the city may pursue action in the district court of the county in which the city is located to have the court determine whether a material breach has occurred. If the court determines that a material breach has occurred, the city may initiate proceedings to condemn the gas system notwithstanding that the term of relinquishment set out in the contract has not expired.

(3) Except upon the express written approval of the city, the utility may not assign or transfer its interest in the contract to an independent third party.

Source: Laws 2002, LB 384, § 22.

ARTICLE 47

BASEBALL

Section
19-4701. City of metropolitan or primary class; powers.

19-4701 City of metropolitan or primary class; powers.

A city of the metropolitan or primary class may acquire, purchase, and operate a professional baseball organization.

Source: Laws 1991, LB 795, § 9.

ARTICLE 48

CODE ENFORCEMENT
(Applicable to cities of the metropolitan, primary, or first class.)

Section
19-4801. Transferred to section 18-1757.

19-4801 Transferred to section 18-1757.

ARTICLE 49

JUDICIAL PROCEEDINGS
(Applicable to cities of the first or second class and villages.)

Section
19-4901. Judicial proceedings; bond not required.

19-4901 Judicial proceedings; bond not required.

No bond for costs, appeal, supersedeas, injunction, or attachment shall be required of any city of the first class, city of the second class, or village or of any officer, member of any board or commission, head of any department, agent, or employee of such city or village in any proceeding or court action in which such city, village, officer, board or commission member, department head, agent, or employee is a party litigant in its, his, or her official capacity.

Source: Laws 2001, LB 104, § 1.

CHAPTER 20
CIVIL RIGHTS

Article.
1. Individual Rights.
   (a) General Provisions. 20-101 to 20-125.
   (b) Persons with Disabilities. 20-126 to 20-131.04.
   (c) Public Accommodations. 20-132 to 20-143.
   (d) Free Flow of Information Act. 20-144 to 20-147.
   (e) Civil Remedies. 20-148.
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   (g) Interpreters. 20-150 to 20-159.
   (h) Political Activities. 20-160.
   (i) Persons with Developmental Disabilities and Mentally Ill Individuals. 20-161 to 20-166.
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2. Rights of Privacy. 20-201 to 20-211.
3. Housing. 20-301 to 20-344.
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ARTICLE 1
INDIVIDUAL RIGHTS

Cross References

Age Discrimination In Employment Act, see section 48-1001.
Equal Opportunity Commission, see sections 48-1116 and 48-1117.
Equal Opportunity for Displaced Homemakers Act, Nebraska, see section 48-1301.
Equal Opportunity in Education Act, Nebraska, see section 79-2,114.
Equal Opportunity in Postsecondary Education Act, Nebraska, see section 85-9,166.
Fair Employment Practice Act, Nebraska, see section 48-1125.

(a) GENERAL PROVISIONS

Section
20-101. Repealed. Laws 1969, c. 120, § 25.
20-102. Repealed. Laws 1969, c. 120, § 25.
20-103. Repealed. Laws 1969, c. 120, § 25.
20-104. Repealed. Laws 1969, c. 120, § 25.
20-105. Transferred to section 20-302.
20-106. Transferred to section 20-310.
20-107. Transferred to section 20-318.
20-108. Repealed. Laws 1991, LB 825, § 53.
20-109. Transferred to section 20-321.
20-110. Transferred to section 20-322.
20-111. Repealed. Laws 1973, LB 112, § 13.
20-112. Transferred to section 20-324.
20-113. Protection of civil rights; incorporated cities; ordinances; county; resolutions; powers; jurisdiction; revocation of liquor license, when.
20-113.01. Legislative findings.
20-114. Repealed. Laws 1991, LB 825, § 53.
20-115. Repealed. Laws 1991, LB 825, § 53.
20-116. Repealed. Laws 1991, LB 825, § 53.
20-117. Repealed. Laws 1991, LB 825, § 53.
20-118. Repealed. Laws 1991, LB 825, § 53.
20-119. Repealed. Laws 1991, LB 825, § 53.
20-120. Repealed. Laws 1991, LB 825, § 53.

(a) GENERAL PROVISIONS

20-101 Repealed. Laws 1969, c. 120, § 25.

20-102 Repealed. Laws 1969, c. 120, § 25.

20-103 Repealed. Laws 1969, c. 120, § 25.

20-104 Repealed. Laws 1969, c. 120, § 25.

20-105 Transferred to section 20-302.

20-106 Transferred to section 20-310.

20-107 Transferred to section 20-318.

20-108 Repealed. Laws 1991, LB 825, § 53.

20-109 Transferred to section 20-321.

20-110 Transferred to section 20-322.

20-111 Repealed. Laws 1973, LB 112, § 13.

20-112 Transferred to section 20-324.

20-113 Protection of civil rights; incorporated cities; ordinances; county; resolutions; powers; jurisdiction; revocation of liquor license, when.

Any incorporated city may enact ordinances and any county may adopt resolutions which are substantially equivalent to the Age Discrimination in Employment Act, the Nebraska Fair Employment Practice Act, the Nebraska Fair Housing Act, and sections 20-126 to 20-143 and 48-1219 to 48-1227 or

which are more comprehensive than such acts and sections in the protection of civil rights. No such ordinance or resolution shall place a duty or liability on any person, other than an employer, employment agency, or labor organization, for acts similar to those prohibited by section 48-1115. Such ordinance or resolution may include authority for a local agency to seek an award of damages or other equitable relief on behalf of the complainant by the filing of a petition in the district court in the county with appropriate jurisdiction. The local agency shall have within its authority jurisdiction substantially equivalent to or more comprehensive than the Equal Opportunity Commission or other enforcement agencies provided under such acts and sections and shall have authority to order backpay and other equitable relief or to enforce such orders or relief in the district court with appropriate jurisdiction. Certified copies of such ordinances or resolutions shall be transmitted to the commission. When the commission determines that any such city or county has enacted an ordinance or adopted a resolution that is substantially equivalent to such acts and sections or is more comprehensive than such acts and sections in the protection of civil rights and has established a local agency to administer such ordinance or resolution, the commission may thereafter refer all complaints arising in such city or county to the appropriate local agency. All complaints arising within a city shall be referred to the appropriate agency in such city when both the city and the county in which the city is located have established agencies pursuant to this section. When the commission refers a complaint to a local agency, it shall take no further action on such complaint if the local agency proceeds promptly to handle such complaint pursuant to the local ordinance or resolution. If the commission determines that a local agency is not handling a complaint with reasonable promptness or that the protection of the rights of the parties or the interests of justice require such action, the commission may regain jurisdiction of the complaint and proceed to handle it in the same manner as other complaints which are not referred to local agencies. In cases of conflict between this section and section 20-332, for complaints subject to the Nebraska Fair Housing Act, section 20-332 shall control.

Any club which has been issued a license by the Nebraska Liquor Control Commission to sell, serve, or dispense alcoholic liquor shall have that license revoked if the club discriminates because of race, color, religion, sex, familial status as defined in section 20-311, handicap as defined in section 20-313, or national origin in the sale, serving, or dispensing of alcoholic liquor to any person who is a guest of a member of such club. The procedure for revocation shall be as prescribed in sections 53-134.04, 53-1,115, and 53-1,116.

Source: Laws 1969, c. 120, § 9, p. 544; Laws 1974, LB 681, § 1; Laws 1979, LB 438, § 2; Laws 1991, LB 344, § 1; Laws 1991, LB 825, § 46; Laws 2007, LB265, § 2.

Cross References

Age Discrimination in Employment Act, see section 48-1001.
Nebraska Fair Employment Practice Act, see section 48-1125.
Nebraska Fair Housing Act, see section 20-301.

20-113.01 Legislative findings.

In order to declare the intent of the present Legislature and to effect the original intent of sections 18-1724 and 20-113, the Legislature finds that civil rights are a local as well as state concern and the Legislature desires to provide

for the local enforcement and enactment of civil rights legislation concurrent with the authority of the State of Nebraska.

Source: Laws 1979, LB 438, § 1.

20-114 Repealed. Laws 1991, LB 825, § 53.

20-115 Repealed. Laws 1991, LB 825, § 53.

20-116 Repealed. Laws 1991, LB 825, § 53.

20-117 Repealed. Laws 1991, LB 825, § 53.

20-118 Repealed. Laws 1991, LB 825, § 53.

20-119 Repealed. Laws 1991, LB 825, § 53.

20-120 Repealed. Laws 1991, LB 825, § 53.

20-121 Transferred to section 20-344.

20-122 Transferred to section 20-132.

20-123 Intent, purpose, public policy; freedom of speech.

It is the intent, purpose, and public policy to protect, preserve, and perpetuate the constitutional right to freely speak, write, and publish on all lawful subjects, including the right to make a comprehensive distribution of such printed materials, either commercial or noncommercial, by using the most effective lawful means or methods, and being responsible for any damages.

Source: Laws 1969, c. 120, § 19, p. 550.

20-124 Interference; restraint of freedoms; penalty.

Any individual, corporation, or municipality that attempts to interfere with or restrain the exercise of the freedoms referred to in sections 20-123 and 20-132, either by ordinance or otherwise, shall be guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding one hundred dollars, or be imprisoned for a period not exceeding six months, or be both so fined and imprisoned, and shall stand committed until such fine and costs of prosecution are paid. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

Source: Laws 1969, c. 120, § 20, p. 551.

While injunctive relief for interference with first amendment right to free speech can be granted, the facts herein do not support such relief. Hartford v. Womens Services, P.C., 239 Neb. 540, 477 N.W.2d 161 (1991).

20-125 Transferred to section 20-301.

(b) PERSONS WITH DISABILITIES

20-126 Statement of policy.

It is the policy of this state to encourage and enable blind, visually handicapped, hearing-impaired, or physically disabled persons to participate fully in the social and economic life of the state and to engage in remunerative employment.

Source: Laws 1971, LB 496, § 1; R.S.Supp.,1971, § 43-633; Laws 1980, LB 932, § 1; Laws 1997, LB 254, § 2.

This section setting forth a general policy to employ the blind and visually handicapped does not require the employment of firemen with visual defects where the disability would prevent the performance of the work involved. McCrea v. Cunningham, 202 Neb. 638, 277 N.W.2d 52 (1979).

20-126.01 Terms, defined.

For purposes of sections 20-126 to 20-131:

(1) Physically disabled person means a person with a physical disability other than hearing impairment, blindness, or visual handicap; and

(2) Service dog means any dog individually trained to do work or perform tasks for the benefit of a physically disabled person, including, but not limited to, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

Source: Laws 1997, LB 254, § 1.

20-127 Rights enumerated.

(1) A blind, visually handicapped, deaf or hard of hearing, or physically disabled person has the same right as any other person to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(2) A blind, visually handicapped, deaf or hard of hearing, or physically disabled person is entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats, any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

(3) A totally or partially blind person has the right to be accompanied by a dog guide, a deaf or hard of hearing person has the right to be accompanied by a hearing dog, a physically disabled person has the right to be accompanied by a service dog, especially trained for the purpose, and a bona fide trainer of a dog guide, hearing dog, or service dog has the right to be accompanied by such dog in training in any of the places listed in subsection (2) of this section without being required to pay an extra charge for the dog guide, hearing dog, or service dog. Such person shall be liable for any damage done to the premises or facilities or to any person by such dog.

(4) A totally or partially blind person has the right to make use of a white cane in any of the places listed in subsection (2) of this section.

Source: Laws 1971, LB 496, § 2; R.S.Supp.,1971, § 43-634; Laws 1980, LB 932, § 2; Laws 1997, LB 254, § 3; Laws 2003, LB 667, § 1.

This section is a penal statute, and it must be strictly construed. By the inclusion of the phrase ''and other places to which the general public is invited'' in subsection (2) of this section, the Legislature evidenced its intent that this statute should apply whenever the general public is invited to a given place at a given time. Softball fields are ''places to which the general public is invited'' under subsection (2). This section is not limited by considerations of safety. Loewenstein v. Amateur Softball Assn., 227 Neb. 454, 418 N.W.2d 231 (1988).

20-128 Pedestrian using cane, dog guide, hearing aid dog, or service dog; driver of vehicle; duties; violation; damages.

In addition to the provisions of sections 28-1313 and 28-1314, the driver of a vehicle approaching (1) a totally or partially blind pedestrian who is carrying a cane predominantly white or metallic in color or using a dog guide, (2) a

hearing-impaired pedestrian who is using a hearing aid dog, or (3) a physically disabled pedestrian who is using a service dog shall take all necessary precautions to avoid injury to such pedestrian, and any driver who fails to take such precautions shall be liable in damages for any injury caused such pedestrian. A totally or partially blind pedestrian not carrying such a cane or using a dog guide, a hearing-impaired pedestrian not using a hearing aid dog, or a physically disabled pedestrian not using a service dog in any of the places, accommodations, or conveyances listed in section 20-127 shall have all of the rights and privileges conferred by law upon other persons, and the failure of a totally or partially blind pedestrian to carry such a cane or to use a dog guide, of a hearing-impaired pedestrian to use a hearing aid dog, or of a physically disabled pedestrian to use a service dog in any such places, accommodations, or conveyances does not constitute and is not evidence of contributory negligence.

Source: Laws 1971, LB 496, § 3; R.S.Supp.,1971, § 43-635; Laws 1978, LB 748, § 2; Laws 1980, LB 932, § 3; Laws 1997, LB 254, § 4.

20-129 Denying or interfering with admittance to public facilities; penalty.

(1) Any person or agent of such person who denies or interferes with admittance to or enjoyment of the public facilities enumerated in section 20-127 or otherwise interferes with the rights of a totally or partially blind, deaf or hard of hearing, or physically disabled person under section 20-127 or sections 20-131.01 to 20-131.04 is guilty of a Class III misdemeanor.

(2) Any person or agent of such person who denies or interferes with admittance to or enjoyment of the public facilities enumerated in section 20-127 or otherwise interferes with the rights of a bona fide trainer of a dog guide, hearing dog, or service dog when training such dog under section 20-127 is guilty of a Class III misdemeanor.

Source: Laws 1971, LB 496, § 4; R.S.Supp.,1971, § 43-636; Laws 1975, LB 83, § 5; Laws 1977, LB 40, § 76; Laws 1980, LB 932, § 4; Laws 1997, LB 254, § 5; Laws 2003, LB 667, § 2.

20-130 White Cane Safety Day; proclamation; Governor issue.

Each year, the Governor shall take suitable public notice of October 15 as White Cane Safety Day. He shall issue a proclamation in which he:

(1) Comments upon the significance of the white cane;

(2) Calls upon the citizens of the state to observe the provisions of sections 20-126 to 20-131 and to take precautions necessary to the safety of the disabled;

(3) Reminds the citizens of the state of the policies with respect to the disabled set forth in sections 20-126 to 20-131 and urges the citizens to cooperate in giving effect to them; and

(4) Emphasizes the need of the citizens to be aware of the presence of disabled persons in the community and to keep safe and functional for the disabled the streets, highways, sidewalks, walkways, public buildings, public facilities, other public places, places of public accommodation, amusement and resort, and other places to which the public is invited, and to offer assistance to disabled persons upon appropriate occasions.

Source: Laws 1971, LB 496, § 5; R.S.Supp.,1971, § 43-637.

20-131 Employment by state and political subdivisions; policy.

It is the policy of this state that persons with disabilities shall be employed by the state, the political subdivisions of the state, the public schools, and all other employment supported in whole or in part by public funds on the same terms and conditions as persons without disabilities as required by the Nebraska Fair Employment Practice Act.

Source: Laws 1971, LB 496, § 6; R.S.Supp.,1971, § 43-638; Laws 1993, LB 360, § 1.

Cross References

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

This section setting forth the policy of the state to employ the blind and visually handicapped does not require the employment of firemen with visual handicaps where that disability would prevent the performance of the work involved. McCrea v. Cunningham, 202 Neb. 638, 277 N.W.2d 52 (1979).

20-131.01 Full and equal enjoyment of housing accommodations; statement of policy.

It is the intent of the Legislature that blind persons, visually handicapped persons, hearing-impaired persons, and other physically disabled persons shall be entitled to full and equal access to all housing accommodations offered for rent, lease, or compensation in this state.

Source: Laws 1975, LB 83, § 1; Laws 1980, LB 932, § 5.

20-131.02 Housing accommodations; terms, defined.

For purposes of sections 20-131.01 to 20-131.04, unless the context otherwise requires:

(1) Housing accommodations means any real property which is used or occupied or is intended, arranged, or designed to be used or occupied as the home, residence, or sleeping place of one or more human beings. Housing accommodations does not include any single-family residence in which the owner lives and in which any room is rented, leased, or provided for compensation to persons other than the owner or primary tenant;

(2) Physically disabled person means a person with a physical disability other than hearing impairment, blindness, or visual handicap; and

(3) Service dog means any dog individually trained to do work or perform tasks for the benefit of a physically disabled person, including, but not limited to, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

Source: Laws 1975, LB 83, § 2; Laws 1997, LB 254, § 6.

20-131.03 Housing accommodations; modification; not required.

Nothing in sections 20-131.01 to 20-131.04 shall require any person who rents, leases, or provides housing accommodations for compensation to modify such person's property in any way to accommodate the special needs of any lessee.

Source: Laws 1975, LB 83, § 3.

20-131.04 Dog guide, hearing aid dog, or service dog; access to housing accommodations; terms and conditions.

Every totally or partially blind person who has a dog guide or who obtains a dog guide, every hearing-impaired person who has a hearing aid dog or who obtains a hearing aid dog, and every physically disabled person who has a service dog or obtains a service dog shall have full and equal access to all housing accommodations with such dog as prescribed in sections 20-131.01 to 20-131.04. Such person shall not be required to pay extra compensation for such dog. Such person shall be liable for any damage done to such premises by such dog. Any person who rents, leases, or provides housing accommodations for compensation may demand or receive a reasonable dog deposit, not to exceed one-fourth of one month's periodic rent, from any totally or partially blind person who has or obtains a dog guide, from any hearing-impaired person who has or obtains a hearing aid dog, or from any physically disabled person who has or obtains a service dog.

Source: Laws 1975, LB 83, § 4; Laws 1980, LB 932, § 6; Laws 1997, LB 254, § 7.

(c) PUBLIC ACCOMMODATIONS

20-132 Full and equal enjoyment of accommodations.

All persons within this state shall be entitled to a full and equal enjoyment of any place of public accommodation, as defined in sections 20-132 to 20-143, without discrimination or segregation on the grounds of race, color, sex, religion, national origin, or ancestry.

Source: Laws 1969, c. 120, § 18, p. 550; R.R.S.1943, § 20-122; Laws 1973, LB 112, § 1.

20-133 Places of public accommodation, defined.

As used in sections 20-132 to 20-143, unless the context otherwise requires, places of public accommodation shall mean all places or businesses offering or holding out to the general public goods, services, privileges, facilities, advantages, and accommodations for the peace, comfort, health, welfare, and safety of the general public and such public places providing food, shelter, recreation, and amusement including, but not limited to:

(1) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including but not limited to any such facility located on the premises of any retail establishment;

(3) Any gasoline station, including all facilities located on the premises of such station and made available to the patrons thereof;

(4) Any motion picture house, theatre, concert hall, sports arena, stadium, or other place of exhibition or entertainment;

(5) Any public facility owned, operated, or managed by or on behalf of this state or any agency or subdivision thereof, or any public corporation, and any such facility supported in whole or in part by public funds; and

(6) Any establishment which is physically located within the premises of any establishment otherwise covered by this section or within the premises of which is physically located any such covered establishment and which holds itself out as serving patrons of such covered establishment.

Source: Laws 1973, LB 112, § 2.

20-134 Discriminatory practices; violation; penalty.

Any person who directly or indirectly refuses, withholds from, denies, or attempts to refuse, withhold, or deny, to any other person any of the accommodations, advantages, facilities, services, or privileges, or who segregates any person in a place of public accommodation on the basis of race, creed, color, sex, religion, national origin, or ancestry, shall be guilty of discriminatory practice and shall be subject to the penalties of sections 20-132 to 20-143.

Source: Laws 1973, LB 112, § 3; Laws 1974, LB 681, § 2.

20-135 Prohibited acts; violation; penalty.

Any person who aids, abets, incites, compels, or coerces any activity prohibited by the provisions of sections 20-132 to 20-143, or who attempts to do so, shall be guilty of discriminatory practice and shall be subject to the penalties of sections 20-132 to 20-143.

Source: Laws 1973, LB 112, § 4.

20-136 Retaliation; discrimination; violation; penalty.

Retaliation or discrimination, in any manner, against any person who has opposed any activity prohibited by the provisions of sections 20-132 to 20-143 or who has testified, assisted, or participated in any manner in any investigation, proceeding, or hearing conducted pursuant to sections 20-132 to 20-143 shall be discriminatory practice and shall be punishable according to the provisions of sections 20-132 to 20-143.

Source: Laws 1973, LB 112, § 5.

20-137 Religious preference; not violation of discriminatory practice.

Any place of public accommodation owned by or operated on behalf of a religious corporation, association, or society which gives preference in the use of such place to members of the same faith as that of the administering body shall not be guilty of discriminatory practice.

Source: Laws 1973, LB 112, § 6.

20-138 Private club or establishment not open to public; applicability of sections.

The provisions of sections 20-132 to 20-143 shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishments are made available to the customers or patrons of an establishment within the scope of section 20-133.

Source: Laws 1973, LB 112, § 7.

20-139 Nebraska Fair Housing Act, free speech, and public accommodations law; administered by Equal Opportunity Commission; powers.

The Nebraska Fair Housing Act and sections 20-123, 20-124, and 20-132 to 20-143 shall be administered by the Equal Opportunity Commission, except that the State Fire Marshal shall administer the act and sections as they relate to accessibility standards and specifications set forth in sections 81-5,147 and 81-5,148. The county attorneys are granted the authority to enforce such act and sections 20-123, 20-124, and 20-132 to 20-143 and shall possess the same powers and duties with respect thereto as the commission. If a complaint is filed with the county attorney, the commission shall be notified. Powers granted to and duties imposed upon the commission pursuant to such act and sections shall be in addition to the provisions of the Nebraska Fair Employment Practice Act and shall not be construed to amend or restrict those provisions. In carrying out the Nebraska Fair Housing Act and sections 20-123, 20-124, and 20-132 to 20-143, the commission shall have the power to:

(1) Seek to eliminate and prevent discrimination in places of public accommodation because of race, color, sex, religion, national origin, familial status as defined in section 20-311, handicap as defined in section 20-313, or ancestry;

(2) Effectuate the purposes of sections 20-132 to 20-143 by conference, conciliation, and persuasion so that persons may be guaranteed their civil rights and goodwill may be fostered;

(3) Formulate policies to effectuate the purposes of sections 20-132 to 20-143 and make recommendations to agencies and officers of the state or local subdivisions of government in aid of such policies and purposes;

(4) Adopt and promulgate rules and regulations to carry out the powers granted by the Nebraska Fair Housing Act and sections 20-123, 20-124, and 20-132 to 20-143, subject to the provisions of the Administrative Procedure Act. The commission shall, not later than one hundred eighty days after September 6, 1991, issue draft rules and regulations to implement subsection (3) of section 20-336, which regulations may incorporate regulations of the Department of Housing and Urban Development as applicable;

(5) Designate one or more members of the commission or a member of the commission staff to conduct investigations of any complaint alleging discrimination because of race, color, sex, religion, national origin, familial status, handicap, or ancestry, attempt to resolve such complaint by conference, conciliation, and persuasion, and conduct such conciliation meetings and conferences as are deemed necessary to resolve a particular complaint, which meetings shall be held in the county in which the complaint arose;

(6) Determine that probable cause exists for crediting the allegations of a complaint;

(7) Determine that a complaint cannot be resolved by conference, conciliation, or persuasion, such determination to be made only at a meeting where a quorum is present;

(8) Dismiss a complaint when it is determined there is not probable cause to credit the allegations;

(9) Hold hearings, subpoena witnesses and compel their attendance, administer oaths, take the testimony of any person under oath, and in connection therewith require for examination any books or papers relating to any matter under investigation or in question before the commission; and

(10) Issue publications and the results of studies and research which will tend to promote goodwill and minimize or eliminate discrimination because of race, color, sex, religion, national origin, familial status, handicap, or ancestry.

Source: Laws 1973, LB 112, § 8; Laws 1991, LB 825, § 47; Laws 1998, LB 1073, § 4; Laws 2002, LB 93, § 2.

Cross References

Administrative Procedure Act, see section 84-920.
Nebraska Fair Employment Practice Act, see section 48-1125.
Nebraska Fair Housing Act, see section 20-301.

20-140 Unlawful discriminatory practice; complaint; file with commission; contents; resolution of complaint; confidential; violation; penalty.

Any person claiming to be aggrieved by an unlawful discriminatory practice may by himself, his agent, or his attorney file with the commission a verified complaint in writing which shall state the name and address of the person alleged to have committed the unlawful discriminatory practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the commission. The Attorney General shall, in like manner, make, sign, and file such complaint.

After the filing of such complaint, the commission shall furnish the person named in the complaint with a copy of the charge and make an investigation of such charge, but such charge shall not be made public by the commission. If the commission determines after such investigation that there is reasonable cause to believe that the charge is true, the commission shall endeavor to eliminate any such alleged unlawful practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during or as a part of such endeavors may be made public by the commission without the written consent of the parties or used as evidence in a subsequent proceeding except as provided in subsection (2) of section 20-141. Any officer or employee of the commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred dollars or imprisoned not more than thirty days.

Source: Laws 1973, LB 112, § 9.

Cross References

For provisions of Equal Opportunity Commission, see sections 48-1116 and 48-1117.

20-141 Failure to eliminate unlawful practice by conference, conciliation, and persuasion; written notice; hearing; procedure.

(1) In case of failure to eliminate any unlawful practice by informal methods of conference, conciliation, and persuasion, the commission shall cause to be issued and served in the name of the commission a written notice, together with a copy of the complaint, requiring the person named in the complaint, hereinafter referred to as respondent, to answer the charges of the complaint at a public hearing, at a time and place to be specified in the notice. The place of the hearing shall be in the county in which the alleged discrimination occurred.

(2) The case in support of the complaint shall be presented before the commission by an attorney on the staff of the Attorney General, and the investigator who made the investigation shall not participate in the hearings except as a witness, nor shall he participate in the deliberation of the commis-

sion in the case. Evidence concerning endeavors at conciliation may be included.

(3) The respondent may file a written verified answer to the complaint and appear at the hearing with or without counsel, submit testimony, and compel the appearance of witnesses and records in his behalf. At the discretion of the commission, the complainant may be allowed to intervene and present testimony in person or by counsel. The commission may reasonably and fairly amend any complaint either prior to or during the hearing in accordance with facts developed by the investigation or adduced in evidence at the hearing, and the respondent may amend his answer in the same manner. The testimony taken at the hearing shall be under oath and be transcribed.

(4) If, upon all the evidence at the hearing, the commission finds that a respondent has engaged in an unlawful discriminatory practice as defined in sections 20-132 to 20-143, the commission shall state its findings of fact and shall issue and cause to be served on the respondent an order requiring the respondent to cease and desist from the unlawful discriminatory practice and to take such affirmative action, including, but not limited to, the extension of full, equal, and unsegregated accommodations, advantages, facilities, and privileges to all persons as in the judgment of the commission will effectuate the purposes of sections 20-132 to 20-143, including a requirement for a report of the manner of compliance.

(5) If, upon all the evidence, the commission finds that a respondent has not engaged in any unlawful discriminatory practice, the commission shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the complaint as to the respondent. A copy of the order shall be delivered in all cases to the Attorney General and such other public officers as the commission deems proper.

(6) The commission shall establish rules of practice to govern, expedite, and effectuate the procedure set forth in this section and its own actions thereunder. Any complaint filed pursuant to this section must be so filed within ten days after the alleged act of discrimination and the complainant shall give written notice of the filing of the complaint and furnish a copy thereof to the party complained against.

Source: Laws 1973, LB 112, § 10.

Cross References

For provisions of Equal Opportunity Commission, see sections 48-1116 and 48-1117.

20-142 Appeal; procedure; attorney's fees; failure to appeal; effect.

(1) Any party to a proceeding before the commission aggrieved by any decision and order of the commission and directly affected thereby may appeal the decision and order, and the appeal shall be in accordance with the Administrative Procedure Act.

(2) In any action or proceeding under sections 20-132 to 20-143, wherein an appeal is lodged in the district court, the court in its discretion may allow the prevailing party reasonable attorney's fees as part of the costs.

(3) If no proceeding to obtain judicial review is instituted by a respondent within thirty days from the service of an order of the commission, the commission may obtain a decree of the court for the enforcement of such order upon showing that the respondent is subject to the commission's jurisdiction and

resides or transacts business within the county in which the petition for enforcement is brought.

Source: Laws 1973, LB 112, § 11; Laws 1988, LB 352, § 20.

Cross References

Administrative Procedure Act, see section 84-920.
For provisions of Equal Opportunity Commission, see sections 48-1116 and 48-1117.

20-143 Violations; penalty.

Any person or place of public accommodation who or which shall willfully resist, prevent, impede, or interfere with the commission or any of its members or representatives in the performance of duty under sections 20-132 to 20-143, or shall willfully violate an order of the commission shall, upon conviction thereof, be imprisoned in the county jail for not more than thirty days, or be fined not more than one hundred dollars, or be both so fined and imprisoned. Procedure for the review of an order of the commission shall not be deemed to be such willful conduct.

Source: Laws 1973, LB 112, § 12.

(d) FREE FLOW OF INFORMATION ACT

20-144 Finding by Legislature.

The Legislature finds:

(1) That the policy of the State of Nebraska is to insure the free flow of news and other information to the public, and that those who gather, write, or edit information for the public or disseminate information to the public may perform these vital functions only in a free and unfettered atmosphere;

(2) That such persons shall not be inhibited, directly or indirectly, by governmental restraint or sanction imposed by governmental process, but rather that they shall be encouraged to gather, write, edit, or disseminate news or other information vigorously so that the public may be fully informed;

(3) That compelling such persons to disclose a source of information or disclose unpublished information is contrary to the public interest and inhibits the free flow of information to the public;

(4) That there is an urgent need to provide effective measures to halt and prevent this inhibition;

(5) That the obstruction of the free flow of information through any medium of communication to the public affects interstate commerce; and

(6) That sections 20-144 to 20-147 are necessary to insure the free flow of information and to implement the first and fourteenth amendments and Article I, section 5, of the United States Constitution, and the Nebraska Constitution.

Source: Laws 1973, LB 380, § 1.

20-145 Terms, defined.

For purposes of the Free Flow of Information Act, unless the context otherwise requires:

(1) Federal or state proceeding shall include any proceeding or investigation before or by any federal or state judicial, legislative, executive, or administrative body;

(2) Medium of communication shall include, but not be limited to, any newspaper, magazine, other periodical, book, pamphlet, news service, wire service, news or feature syndicate, broadcast station or network, or cable television system;

(3) Information shall include any written, audio, oral, or pictorial news or other material;

(4) Published or broadcast information shall mean any information disseminated to the public by the person from whom disclosure is sought;

(5) Unpublished or nonbroadcast information shall include information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated and shall include, but not be limited to, all notes, outtakes, photographs, film, tapes, or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published or broadcast information based upon or related to such material has been disseminated;

(6) Processing shall include compiling, storing, transferring, handling, and editing of information; and

(7) Person shall mean any individual, partnership, limited liability company, corporation, association, or other legal entity existing under or authorized by the law of the United States, any state or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any foreign country.

Source: Laws 1973, LB 380, § 2; Laws 1993, LB 121, § 146.

20-146 Procuring, gathering, writing, editing, or disseminating news or other information; not required to disclose to courts or public.

No person engaged in procuring, gathering, writing, editing, or disseminating news or other information to the public shall be required to disclose in any federal or state proceeding:

(1) The source of any published or unpublished, broadcast or nonbroadcast information obtained in the gathering, receiving, or processing of information for any medium of communication to the public; or

(2) Any unpublished or nonbroadcast information obtained or prepared in gathering, receiving, or processing of information for any medium of communication to the public.

Source: Laws 1973, LB 380, § 3.

20-147 Act, how cited.

Sections 20-144 to 20-147 shall be known and may be cited as the Free Flow of Information Act.

Source: Laws 1973, LB 380, § 4.

(e) CIVIL REMEDIES

20-148 Deprivation of constitutional and statutory rights, privileges, or immunities; redress.

(1) Any person or company, as defined in section 49-801, except any political subdivision, who subjects or causes to be subjected any citizen of this state or

other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the United States Constitution or the Constitution and laws of the State of Nebraska, shall be liable to such injured person in a civil action or other proper proceeding for redress brought by such injured person.

(2) The remedies provided by this section shall be in addition to any other remedy provided by Chapter 20, article 1, and shall not be interpreted as denying any person the right of seeking other proper remedies provided thereunder.

Source: Laws 1977, LB 66, § 1.

The applicable statute of limitations for Nebraska Fair Employment Practice Act claims brought pursuant to this section shall be measured by section 48-1118. Adkins v. Burlington Northern Santa Fe RR. Co., 260 Neb. 156, 615 N.W.2d 469 (2000).

This section does not modify the eligibility criteria under sections 48-1001 et seq. and 48-1101 et seq. Steier v. Crosier Fathers of Hastings, 242 Neb. 16, 492 N.W.2d 870 (1992).

This section does not constitute a waiver of sovereign immunity by the State of Nebraska for actions brought in federal court under 42 U.S.C. 1983 (1982). Patteson v. Johnson, 219 Neb. 852, 367 N.W.2d 123 (1985).

This section does not waive the sovereign immunity of the State of Nebraska as to actions brought in federal court under 42 U.S.C. section 1983 (1982) to protect rights under the contract clause (article I, section 10, of the U.S. Constitution) and property interests protected under the fourteenth amendment to the U.S. Constitution. Wiseman v. Keller, 218 Neb. 717, 358 N.W.2d 768 (1984).

This section provides a private cause of action for private acts of discrimination by private employers and does not apply to individuals acting in their capacities as public officials. Cole v. Isherwood, 11 Neb. App. 44, 642 N.W.2d 524 (2002).

This section provides a private cause of action for private acts of discrimination by private employers; it does not apply to individuals acting in their capacities as public officials. Cole v. Clarke, 8 Neb. App. 614, 598 N.W.2d 768 (1999).

(f) CONSUMER INFORMATION

20-149 Consumer reporting agency; furnish information to consumer; duty; violation; penalty.

Any consumer reporting agency doing business in this state which is required to furnish information to a consumer pursuant to 15 U.S.C. 1681g to 1681j as they exist on August 26, 1983, shall, upon the request of the consumer and at a reasonable charge, provide the consumer with a typewritten or photostatic copy of any consumer report, investigative report, or any credit report or other file information which it has on file or has prepared concerning such consumer, if such consumer has complied with 15 U.S.C. 1681h as it exists on August 26, 1983. If such report uses a code to convey information about the consumer, the consumer shall be provided with a key to such code. For the purposes of this section, the definitions found in 15 U.S.C. 1681a as it exists on August 26, 1983, shall apply. Any person violating this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1983, LB 197, § 1.

Cross References

Credit Report Protection Act, see section 8-2601.

(g) INTERPRETERS

20-150 Legislative findings; licensed interpreters; qualified educational interpreters; legislative intent.

(1) The Legislature hereby finds and declares that it is the policy of the State of Nebraska to secure the rights of deaf and hard of hearing persons who cannot readily understand or communicate in spoken language and who consequently cannot equally participate in or benefit from proceedings, pro-

grams, and activities of state agencies and law enforcement personnel unless interpreters are available to assist them. State agencies and law enforcement personnel shall appoint licensed interpreters as provided in sections 20-150 to 20-159, except that courts and probation officials shall appoint interpreters as provided in sections 20-150 to 20-159 and 25-2401 to 25-2407 and public school districts and educational units shall appoint qualified educational interpreters.

(2) It is the intent of the Legislature that by June 30, 2007, the Commission for the Deaf and Hard of Hearing shall license and evaluate licensed interpreters. Prior to June 30, 2007, the commission shall (a) develop licensed interpreter guidelines for distribution, (b) develop training to implement the guidelines, (c) adopt and promulgate rules and regulations to implement the guidelines and requirements for licensed interpreters, and (d) develop a roster of interpreters as required in section 71-4728.

(3) It is the intent of the Legislature to assure that qualified educational interpreters are provided to deaf and hard of hearing children in kindergarten-through-grade-twelve public school districts and educational service units. Prior to September 1, 1998, the State Department of Education, in cooperation with the Commission for the Deaf and Hard of Hearing, shall develop qualified educational interpreter guidelines for distribution as well as a training program to implement the guidelines. By September 1, 2000, the State Department of Education shall adopt and promulgate rules and regulations to implement the guidelines and requirements for qualified educational interpreters, and such rules and regulations shall apply to all qualified educational interpreters employed for the 2001-02 school year and all school years thereafter.

Source: Laws 1987, LB 376, § 1; Laws 1997, LB 851, § 1; Laws 2002, LB 22, § 1; Laws 2006, LB 87, § 1.

Cross References

Legal proceedings, use of interpreters, see section 25-2401 et seq.

20-151 Terms, defined.

For purposes of sections 20-150 to 20-159, unless the context otherwise requires:

(1) Appointing authority means the state agency or law enforcement personnel required to provide a licensed interpreter pursuant to sections 20-150 to 20-159;

(2) Auxiliary aid includes, but is not limited to, sign language interpreters, oral interpreters, tactile interpreters, other interpreters, notetakers, transcription services, written materials, assistive listening devices, assisted listening systems, videotext displays, and other visual delivery systems;

(3) Deaf or hard of hearing person means a person whose hearing impairment, with or without amplification, is so severe that he or she may have difficulty in auditorily processing spoken language without the use of an interpreter or a person with a fluctuating or permanent hearing loss which may adversely affect the ability to understand spoken language without the use of an interpreter or other auxiliary aid;

(4) Intermediary interpreter means any person, including any deaf or hard of hearing person, who is able to assist in providing an accurate interpretation between spoken English and sign language or between variants of sign lan-

guage in order to facilitate communication between a deaf or hard of hearing person and an interpreter;

(5) Licensed interpreter means a person who demonstrates proficiencies in interpretation or transliteration as required by the rules and regulations adopted and promulgated by the Commission for the Deaf and Hard of Hearing pursuant to subsection (2) of section 20-150 and who holds a license issued by the commission pursuant to section 20-156;

(6) Oral interpreter means a person who interprets language through facial expression, body language, and mouthing;

(7) State agency means any state entity which receives appropriations from the Legislature and includes the Legislature, legislative committees, executive agencies, courts, and probation officials but does not include political subdivisions; and

(8) Tactile interpreter means a person who interprets for a deaf-blind person. The degree of deafness and blindness will determine the mode of communication to be used for each person.

Source: Laws 1987, LB 376, § 2; Laws 1997, LB 851, § 2; Laws 2002, LB 22, § 2; Laws 2006, LB 87, § 2.

20-152 Deaf or hard of hearing person; arrest; right to interpreter; use of statements.

Whenever a deaf or hard of hearing person is arrested and taken into custody for an alleged violation of state law or local ordinance, the appointing authority shall procure a licensed interpreter for any interrogation, warning, notification of rights, or taking of a statement, unless otherwise waived. No arrested deaf or hard of hearing person otherwise eligible for release shall be held in custody solely to await the arrival of a licensed interpreter. A licensed interpreter shall be provided as soon as possible. No written or oral answer, statement, or admission made by a deaf or hard of hearing person in reply to a question of any law enforcement officer or any other person having a prosecutorial function may be used against the deaf or hard of hearing person in any criminal proceeding unless (1) the statement was made or elicited through a licensed interpreter and was made knowingly, voluntarily, and intelligently or (2) the deaf or hard of hearing person waives his or her right to an interpreter and the waiver and statement were made knowingly, voluntarily, and intelligently. The right of a deaf or hard of hearing person to an interpreter may be waived only in writing. The failure to provide a licensed interpreter pursuant to this section shall not be a defense to prosecution for the violation for which the deaf or hard of hearing person was arrested.

Source: Laws 1987, LB 376, § 3; Laws 1997, LB 851, § 3; Laws 2002, LB 22, § 3.

20-153 Proceedings; interpreter provided; when.

(1) For any proceeding before an appointing authority including any court at which a deaf or hard of hearing person is subpoenaed or requested in writing to attend, the appointing authority shall obtain a licensed interpreter to interpret the proceedings to the deaf or hard of hearing person and to interpret his or her testimony or statements.

(2) Whenever any state agency uses the services of a qualified interpreter, as defined in federal law, to comply with sections 42 U.S.C. 12102, 12131, and 12132, and any regulations adopted thereunder, as such sections and regulations existed on July 20, 2002, the state agency shall obtain a licensed interpreter to act as a qualified interpreter for such purposes.

Source: Laws 1987, LB 376, § 4; Laws 1997, LB 851, § 4; Laws 2002, LB 22, § 4.

20-154 Appointment of additional interpreters.

If a licensed interpreter appointed under section 20-153 is not able to provide effective communication with a deaf or hard of hearing person, the appointing authority shall obtain another licensed interpreter. An oral interpreter shall be provided upon request of a deaf or hard of hearing person who chooses not to communicate in sign language. If an interpreter is unable to render a satisfactory interpretation, the appointing authority shall then obtain an intermediary interpreter to assist the appointed interpreter. The appointing authority shall ensure that any interpreter is properly situated so as to permit effective communication with the deaf or hard of hearing person and full participation of the deaf or hard of hearing person in the proceeding.

Source: Laws 1987, LB 376, § 5; Laws 1997, LB 851, § 5; Laws 2002, LB 22, § 5.

20-155 Proof of hearing impairment.

When an appointing authority has reason to believe that a person is not deaf or hard of hearing or is not dependent on an interpreter to ensure receptive or expressive communication, the appointing authority may require the person to furnish reasonable proof of his or her need for an interpreter.

Source: Laws 1987, LB 376, § 6; Laws 1997, LB 851, § 6.

20-155.01 Interpreter; oath required.

In any proceeding in which a deaf or hard of hearing person is testifying under oath or affirmation, the interpreter shall take an oath or affirmation that he or she will make a true interpretation of the proceeding in an understandable manner to the best of his or her ability.

Source: Laws 1987, LB 376, § 8; R.S.1943, (1991), § 20-157; Laws 1997, LB 851, § 7.

20-156 Commission; interpreters; licensure; requirements; fees; roster; disciplinary actions; review; injunctions authorized.

(1) The Commission for the Deaf and Hard of Hearing shall license and evaluate licensed interpreters. The commission shall create the Interpreter Review Board pursuant to section 71-4728.05 to set policies, standards, and procedures for evaluation and licensing of interpreters. The commission may recognize evaluation and certification programs as a means to carry out the duty of evaluating interpreters' skills. The commission may define and establish different levels or types of licensure to reflect different levels of proficiency and different specialty areas.

(2) The commission shall establish and charge reasonable fees for licensure of interpreters, including applications, renewals, modifications, record keeping,

approval, conduct, and sponsorship of continuing education, and assessment of continuing competency pursuant to sections 20-150 to 20-159. All fees collected pursuant to this section by the commission shall be remitted to the State Treasurer for credit to the Commission for the Deaf and Hard of Hearing Fund. Such fees shall be disbursed for payment of expenses related to this section.

(3) The commission shall prepare and maintain a roster of licensed interpreters as provided by section 71-4728. Nothing in sections 20-150 to 20-159 shall be construed to prevent any appointing authority from contracting with a licensed interpreter on a full-time employment basis.

(4) The commission may deny, refuse to renew, limit, revoke, suspend, or take other disciplinary actions against a license when the applicant or licensee is found to have violated any provision of sections 20-150 to 20-159 or 71-4728 to 71-4732, or any rule or regulation of the commission adopted and promulgated pursuant to such sections, including rules and regulations governing unprofessional conduct. The Interpreter Review Board shall investigate complaints regarding the use of interpreters by any appointing authority, or the providing of interpreting services by any interpreter, alleged to be in violation of sections 20-150 to 20-159 or rules and regulations of the commission. The commission shall notify in writing an appointing authority determined to be employing interpreters in violation of sections 20-150 to 20-159 or rules and regulations of the commission and shall monitor such appointing authority to prevent future violations.

(5) Any decision of the commission pursuant to this section shall be subject to review according to the Administrative Procedure Act.

(6) After June 30, 2007, any person providing interpreting services pursuant to sections 20-150 to 20-159 without a license issued pursuant to this section may be restrained by temporary and permanent injunctions.

Source: Laws 1987, LB 376, § 7; Laws 1997, LB 752, § 78; Laws 1997, LB 851, § 8; Laws 2002, LB 22, § 6; Laws 2006, LB 87, § 3.

Cross References

Administrative Procedure Act, see section 84-920.

20-157 Transferred to section 20-155.01.

20-158 Interpreter; privilege applicable.

Whenever a deaf or hard of hearing person communicates through an interpreter under circumstances in which the communication would otherwise be privileged, the privilege shall apply to the interpreter as well.

Source: Laws 1987, LB 376, § 9; Laws 1997, LB 851, § 9.

20-159 Fees authorized.

A licensed interpreter appointed pursuant to sections 20-150 to 20-159 is entitled to a fee for professional services and other relevant expenses as approved by the governing body of the appointing authority. When the licensed interpreter is appointed by a court, the fee shall be paid out of the General Fund with funds appropriated to the Supreme Court for that purpose. When the licensed interpreter is appointed by an appointing authority other than a court,

the fee shall be paid out of funds available to the governing body of the appointing authority.

Source: Laws 1987, LB 376, § 10; Laws 1997, LB 851, § 10; Laws 1999, LB 54, § 2; Laws 2002, LB 22, § 7.

(h) POLITICAL ACTIVITIES

20-160 Employees of state or political subdivisions; prohibited from political activities during office hours, while performing official duties, or while wearing a uniform.

Unless specifically restricted by a federal law or any other state law, no employee of the state or any political subdivision thereof, as defined in subdivision (2) of section 13-702, shall be prohibited from participating in political activities except during office hours or when otherwise engaged in the performance of his or her official duties. No such employee shall engage in any political activity while wearing a uniform required by the state or any political subdivision thereof.

Source: Laws 1977, LB 398, § 1; R.S.1943, (1983), § 23-3001.

Cross References

For other provisions relating to prohibited political activities, see section 81-1315.

(i) PERSONS WITH DEVELOPMENTAL DISABILITIES AND MENTALLY ILL INDIVIDUALS

20-161 Sections; purpose.

The purpose of sections 20-161 to 20-166 is to protect the legal and human rights of persons with developmental disabilities or mentally ill individuals by providing access to certain records of a person with developmental disabilities or of a mentally ill individual by the officially designated protection and advocacy system for the developmentally disabled and mentally ill in this state.

Source: Laws 1988, LB 697, § 1.

20-162 Terms, defined.

For purposes of sections 20-161 to 20-166, unless the context otherwise requires:

(1) Complaint shall mean any oral or written allegation by a person with a developmental disability or a mentally ill individual, the parent or guardian of such persons, a state agency, or any other responsible named individual or entity to the effect that the person with developmental disabilities or the mentally ill individual is being subjected to injury or deprivation with regard to his or her health, safety, welfare, rights, or level of care;

(2) Developmental disability shall mean a severe chronic mental or physical disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000 et seq., as amended;

(3) Facility for mentally ill individuals shall mean any place within Nebraska where a mentally ill individual is an inpatient or a resident and that is organized to provide treatment, shelter, food, care, or supervision including, but not limited to, those facilities described in the Health Care Facility Licensure Act and sections 71-1901 to 71-1916, 83-107.01, and 83-108;

(4) Facility for persons with developmental disabilities shall mean a facility or a specified portion of a facility designed primarily for the delivery of one or more services to persons with one or more developmental disabilities including, but not limited to, those facilities described in the Health Care Facility Licensure Act and sections 71-1901 to 71-1916, 83-107.01, and 83-108 whenever a person with a developmental disability is residing in such facility;

(5) Mentally ill individual shall mean an individual who has a significant mental illness or emotional impairment as determined by a mental health professional qualified under the laws, rules, and regulations of this state and who is an inpatient or resident in a facility for mentally ill individuals;

(6) Protection and advocacy system shall mean the entity designated pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000 et seq., as amended;

(7) Records shall mean all information and data obtained, collected, or maintained by a facility for persons with developmental disabilities or a facility for mentally ill individuals in the course of providing services to such persons which are reasonably related to the complaint to be investigated; and

(8) Services for persons with developmental disabilities shall mean services as defined in the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000 et seq., as amended.

Source: Laws 1988, LB 697, § 2; Laws 2000, LB 819, § 63; Laws 2006, LB 994, § 50.

Cross References

Health Care Facility Licensure Act, see section 71-401.

20-163 Person with developmental disabilities; access to records; conditions.

For the purpose of protecting the human and legal rights of a person with developmental disabilities, the protection and advocacy system shall be granted access to the records, by any person or entity having possession or control of such records, of a person with developmental disabilities who resides in a facility for persons with developmental disabilities if (1) a complaint has been received by the protection and advocacy system from the legal guardian of such person or (2) a complaint has been received by the protection and advocacy system from or on behalf of such person and such person does not have a legal guardian or the state or the designee of the state is the legal guardian of such person.

Source: Laws 1988, LB 697, § 3.

20-164 Mentally ill individual; access to records; conditions.

(1) For the purpose of protecting the human and legal rights of a mentally ill individual or with respect to matters which occur within ninety days after the date of the discharge of such individual from a facility for mentally ill individuals, the protection and advocacy system shall be granted access to the records, by any person or entity having possession or control of such records, of:

(a) Any mentally ill individual who is a client of the protection and advocacy system if such individual or the legal guardian, conservator, or other legal representative of such individual has authorized the protection and advocacy system to have such access; and

(b) Any mentally ill individual:

(i) Who by reason of the mental or physical condition of such individual is unable to authorize the protection and advocacy system to have such access;

(ii) Who does not have a legal guardian, conservator, or other legal representative or for whom the legal guardian is this state; and

(iii) With respect to whom a complaint has been received by the protection and advocacy system or with respect to whom there is probable cause to believe that such individual has been subject to injury or deprivation with regard to his or her health, safety, welfare, rights, or level of care.

(2) The protection and advocacy system may not disclose information from such records to the mentally ill individual who is the subject of the information if disclosure of such information to such individual would be detrimental to such individual's health or if a court pursuant to section 71-961 orders that the records not be disclosed.

Source: Laws 1988, LB 697, § 4; Laws 2004, LB 1083, § 84.

20-165 Records; redisclosure; conditions.

No record nor the contents of any record which identify or can be readily associated with the identity of the subject of the record shall be redisclosed by the protection and advocacy system without the specific written authorization of the subject or the subject's legally authorized representative. The protection and advocacy system shall provide seven days' advance written notice to the facility from which the records were received of its intent to redisclose such records, during which time the facility may seek to judicially enjoin such disclosure on the grounds that such disclosure is contrary to the interests of the subject of the record. Seven days' advance written notice to the facility shall not be required if redisclosure of such records is to an entity with legal authority to act to protect the legal and human rights of the subject of such records.

Source: Laws 1988, LB 697, § 5.

20-166 Protection and advocacy system; pursuit of administrative remedies; when required.

(1) Prior to instituting any legal action in a federal or state court on behalf of a mentally ill individual or a person with developmental disabilities, the protection and advocacy system shall exhaust in a timely manner all administrative remedies when appropriate. If, in pursuing administrative remedies, the system determines that any matter with respect to such individual will not be resolved within a reasonable time, the system may pursue alternative remedies, including the initiation of legal action.

(2) Subsection (1) of this section shall not apply to any legal action instituted to prevent or eliminate imminent serious harm to a mentally ill individual or a person with developmental disabilities.

Source: Laws 1988, LB 697, § 6.

(j) HUMAN IMMUNODEFICIENCY VIRUS

20-167 Discrimination; legislative intent; state agencies; duties.

It is the intent of the Legislature that no person should be discriminated against on the basis of having taken a human immunodeficiency virus antibody or antigen test.

Each agency of state government shall examine policies and practices within its jurisdiction that may intentionally or unintentionally result in discrimination against a person who has taken a human immunodeficiency virus antibody or antigen test or who has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome related complex to ascertain the extent and types of discrimination that may exist. Each agency shall identify proposed changes in statutes or agency rules and regulations to remedy discrimination. Each agency shall report its findings to the Legislature on or before December 1, 1988.

Source: Laws 1988, LB 1012, § 13.

20-168 Employment, dwelling, school district, place of public accommodation; discrimination prohibited; civil action; authorized.

(1) An employer shall not (a) refuse to hire an individual, (b) discharge an individual, or (c) otherwise discriminate against an individual with respect to compensation or terms, conditions, or privileges of employment on the basis that the individual is suffering or is suspected of suffering from human immunodeficiency virus infection or acquired immunodeficiency syndrome.

(2) A seller or lessor shall not refuse to sell or lease a dwelling as defined in section 20-310 to an individual on the basis that the individual, a member of the individual's family, or a person who will be residing with the individual is suffering or is suspected of suffering from human immunodeficiency virus infection or acquired immunodeficiency syndrome.

(3) A school district shall not deny admission to a student on the basis that the student is suffering or is suspected of suffering from human immunodeficiency virus infection or acquired immunodeficiency syndrome.

(4) A place of public accommodation as defined in section 20-133 shall not deny equal access to such public accommodation on the basis that the individual is suffering or is suspected of suffering from human immunodeficiency virus infection or acquired immunodeficiency syndrome.

(5) Any individual who has been discriminated against in violation of this section may file a civil action to enforce this section in the district court of the county where the discrimination is alleged to have occurred. The remedy granted by this subsection shall be in addition to any other remedy provided by law and shall not be interpreted as denying any other remedy provided by law.

Source: Laws 1990, LB 465, § 1; Laws 1991, LB 825, § 48.

20-169 Individual; threat to health or safety; unable to perform duties; effect.

Actions otherwise prohibited by subsections (1) and (3) of section 20-168 shall not constitute a violation of the requirements of such section if the individual suffering from or suspected of suffering from human immunodeficiency virus infection or acquired immunodeficiency syndrome poses a direct threat to the health or safety of himself, herself, or other individuals or is unable to perform the duties of the job he or she is applying for or is employed to perform.

Source: Laws 1990, LB 465, § 2.

ARTICLE 2
RIGHTS OF PRIVACY

Cross References

Wiretaps, procedures, see sections 86-271 to 86-2,115.

Section
20-201. Right of privacy; legislative intent.
20-202. Invasion of privacy; exploitation of a person for advertising or commercial purposes; situations; not applicable.
20-203. Invasion of privacy; trespass or intrude upon a person's solitude.
20-204. Invasion of privacy; place person before public in false light.
20-205. Publication or intrusion; not actionable; when.
20-206. Right of privacy; defenses and privileges.
20-207. Invasion of privacy; action; nonassignable.
20-208. Invasion of privacy; death of subject; effect.
20-209. Libel, slander, or invasion of privacy; one cause of action.
20-210. Judgment; bar against other actions.
20-211. Invasion of privacy; statute of limitations.

20-201 Right of privacy; legislative intent.

It is the intention of the Legislature to provide a right of privacy as described and limited by sections 20-201 to 20-211 and 25-840.01, and to give to any natural person a legal remedy in the event of violation of the right.

Source: Laws 1979, LB 394, § 1.

20-202 Invasion of privacy; exploitation of a person for advertising or commercial purposes; situations; not applicable.

Any person, firm, or corporation that exploits a natural person, name, picture, portrait, or personality for advertising or commercial purposes shall be liable for invasion of privacy. The provisions of this section shall not apply to:

(1) The publication, printing, display, or use of the name or likeness of any person in any printed, broadcast, telecast, or other news medium or publication as part of any bona fide news report or presentation or noncommercial advertisement having a current or historical public interest and when such name or likeness is not used for commercial advertising purposes;

(2) The use of such name, portrait, photograph, or other likeness in connection with the resale or other distribution of literary, musical, or artistic productions or other articles of merchandise or property when such person has consented to the use of his or her name, portrait, photograph, or likeness on or in connection with the initial sale or distribution thereof so long as such use does not differ materially in kind, extent, or duration from that authorized by the consent as fairly construed; or

(3) Any photograph of a person solely as a member of the public when such person is not named or otherwise identified in or in connection with the use of such photograph.

Source: Laws 1979, LB 394, § 2.

Invasion of privacy under this section typically applies to cases in which a photograph or other likeness of a person is distributed without that person's consent for commercial gain. Wilkinson v. Methodist, Richard Young Hosp., 259 Neb. 745, 612 N.W.2d 213 (2000).

Conduct to which one consents cannot constitute an invasion of privacy. Miller v. American Sports Co., 237 Neb. 676, 467 N.W.2d 653 (1991).

20-203 Invasion of privacy; trespass or intrude upon a person's solitude.

Any person, firm, or corporation that trespasses or intrudes upon any natural person in his or her place of solitude or seclusion, if the intrusion would be highly offensive to a reasonable person, shall be liable for invasion of privacy.

Source: Laws 1979, LB 394, § 3.

An invasion of privacy pursuant to this section is one consisting solely of an intentional interference with the plaintiff's interest in solitude or seclusion, either as to his or her person or private affairs or concerns, of a kind that would be highly offensive to a reasonable person. Whipps Land & Cattle Co. v. Level 3 Communications, 265 Neb. 472, 658 N.W.2d 258 (2003).

Trespassing onto real property, without more, is not the form or magnitude of interference into a person's solitude or seclusion that would rise to the level of being highly offensive to a reasonable person, such as might be actionable under this section. Whipps Land & Cattle Co. v. Level 3 Communications, 265 Neb. 472, 658 N.W.2d 258 (2003).

The accusation of drug use at the workplace, without more, is not the form of interference into a person's solitude or seclusion that would rise to the level of being highly offensive to a reasonable person, such as might be actionable under this section. Polinski v. Sky Harbor Air Serv., 263 Neb. 406, 640 N.W.2d 391 (2002).

Operation of model airplane airfield was not type of intrusion that this section was designed to protect people from. Kaiser v. Western R/C Flyers, 239 Neb. 624, 477 N.W.2d 557 (1991).

In an action for invasion of privacy, the damages that a plaintiff may recover are (1) general damages for harm to the plaintiff's interest in privacy which resulted from the invasion; (2) damages for mental suffering; (3) special damages; and (4) if none of these are proven, nominal damages. Sabrina W. v. Willman, 4 Neb. App. 149, 540 N.W.2d 364 (1995).

20-204 Invasion of privacy; place person before public in false light.

Any person, firm, or corporation which gives publicity to a matter concerning a natural person that places that person before the public in a false light is subject to liability for invasion of privacy, if:

(1) The false light in which the other was placed would be highly offensive to a reasonable person; and

(2) The actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

Source: Laws 1979, LB 394, § 4.

In order to recover for invasion of privacy under this section, the matter must be communicated to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge. Wilkinson v. Methodist, Richard Young Hosp., 259 Neb. 745, 612 N.W.2d 213 (2000).

Essential to a false light invasion of privacy claim is that the publicized matter be false. Schoneweis v. Dando, 231 Neb. 180, 435 N.W.2d 666 (1989).

The gravamen of conduct made actionable by this section is the dissemination of offending material to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge. Schoneweis v. Dando, 231 Neb. 180, 435 N.W.2d 666 (1989).

Truth is a defense to a false light privacy claim. Wadman v. State, 1 Neb. App. 839, 510 N.W.2d 426 (1993).

20-205 Publication or intrusion; not actionable; when.

Any publication or intrusion otherwise actionable under section 20-202, 20-203, or 20-204 shall be justified and not actionable under sections 20-201 to 20-211 and 25-840.01 if the subject of such publication or intrusion expressly or by implication consents to the publicity or intrusion so long as such publication or intrusion does not differ materially in kind, extent, or duration from that implicitly or expressly authorized by the consent as fairly construed. If such person is a minor, such consent may be given by a parent or guardian. If the subject of the alleged invasion of privacy is deceased, such consent may be given by the surviving spouse, if any, or by the personal representative.

Source: Laws 1979, LB 394, § 5.

20-206 Right of privacy; defenses and privileges.

In addition to any defenses and privileges created in sections 20-201 to 20-211 and 25-840.01, the statutory right of privacy created in sections 20-201 to 20-211 and 25-840.01 shall be subject to the following defenses and privileges:

(1) All applicable federal and Nebraska statutory and constitutional defenses;

(2) As to communications alleged to constitute an invasion of privacy, the defense that the communication was made under circumstances that would give rise to an applicable qualified or absolute privilege according to the law of defamation; and

(3) All applicable, qualified, and absolute privileges and defenses in the common law of privacy in this state and other states.

Source: Laws 1979, LB 394, § 6.

20-207 Invasion of privacy; action; nonassignable.

The action for invasion of privacy created by sections 20-201 to 20-211 and 25-840.01 shall be personal to the subject of the invasion and shall in no case be assignable.

Source: Laws 1979, LB 394, § 7.

20-208 Invasion of privacy; death of subject; effect.

The right of action for invasion of privacy created by sections 20-201 to 20-211 and 25-840.01, with the single exception of the action arising out of exploitation of a person's name or likeness in section 20-202, shall not be deemed to survive the death of the subject of any such invasion of privacy.

Source: Laws 1979, LB 394, § 8.

20-209 Libel, slander, or invasion of privacy; one cause of action.

No person shall have more than one cause of action for damages for libel or slander or invasion of privacy or any other tort founded upon any single publication, exhibition, or utterance, such as any one issue of a newspaper or book or magazine or any one presentation to an audience or any one broadcast over radio or television or any one exhibition of a motion picture. Recovery in any action shall include all damages for any such tort suffered by the plaintiff in all jurisdictions.

Source: Laws 1979, LB 394, § 9.

Cross References

Defamatory statements, civil actions authorized, see sections 25-839 to 25-840.02.

20-210 Judgment; bar against other actions.

A judgment in any jurisdiction for or against the plaintiff upon the substantive merits of any action for damages founded upon a single publication, exhibition, or utterance as described in section 20-209 shall bar any other action for damages by the same plaintiff against the same defendant founded upon the same publication, exhibition, or utterance.

Source: Laws 1979, LB 394, § 10.

20-211 Invasion of privacy; statute of limitations.

An action for invasion of privacy must be brought within one year of the date the cause of action arose.

Source: Laws 1979, LB 394, § 11.

ARTICLE 3
HOUSING

Cross References

Housing accommodations, blind, visually impaired, hearing impaired, and otherwise physically disabled, see sections 20-131.01 to 20-131.04.

Section

Section
20-344. Violations; penalty.

20-301 Act, how cited.

Sections 20-301 to 20-344 shall be known and may be cited as the Nebraska Fair Housing Act.

Source: Laws 1969, c. 120, § 23, p. 553; R.S.1943, (1987), § 20-125; Laws 1991, LB 825, § 2.

20-302 Civil rights; policy of state.

It is the policy of the State of Nebraska that there shall be no discrimination in the acquisition, ownership, possession, or enjoyment of housing throughout the State of Nebraska in accordance with Article I, section 25, of the Constitution of Nebraska.

Source: Laws 1969, c. 120, § 1, p. 539; R.S.1943, (1987), § 20-105; Laws 1991, LB 825, § 3.

20-303 Definitions, where found.

For purposes of the Nebraska Fair Housing Act, the definitions found in sections 20-304 to 20-317 shall be used.

Source: Laws 1991, LB 825, § 4.

20-304 Aggrieved person, defined.

Aggrieved person shall include any person who:

(1) Claims to have been injured by a discriminatory housing practice; or

(2) Believes that he or she will be injured by a discriminatory housing practice that is about to occur.

Source: Laws 1991, LB 825, § 5.

20-305 Commission, defined.

Commission shall mean the Equal Opportunity Commission.

Source: Laws 1991, LB 825, § 6.

20-306 Complainant, defined.

Complainant shall mean the person, including the commission, who files a complaint under section 20-326.

Source: Laws 1991, LB 825, § 7.

20-307 Conciliation, defined.

Conciliation shall mean the attempted resolution of issues raised by a complaint or by the investigation of a complaint through informal negotiations involving the aggrieved person, the respondent, and the commission.

Source: Laws 1991, LB 825, § 8.

20-308 Conciliation agreement, defined.

Conciliation agreement shall mean a written agreement setting forth the resolution of the issues in conciliation.

Source: Laws 1991, LB 825, § 9.

20-309 Discriminatory housing practice, defined.

Discriminatory housing practice shall mean an act that is unlawful under section 20-318, 20-319, 20-320, 20-321, or 20-344.

Source: Laws 1991, LB 825, § 10.

20-310 Dwelling, defined.

Dwelling shall mean any building, structure, or portion thereof which is occupied as or designed or intended for occupancy as a residence for one or more families and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

Source: Laws 1969, c. 120, § 2, p. 539; R.S.1943, (1987), § 20-106; Laws 1991, LB 825, § 11.

20-311 Familial status, defined.

Familial status shall mean one or more minors being domiciled with:

(1) A parent or another person having legal custody of such individual; or

(2) The designee of a parent or other person having legal custody, with the written permission of the parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any minor.

Source: Laws 1991, LB 825, § 12.

20-312 Family, defined.

Family shall include a single individual.

Source: Laws 1991, LB 825, § 13.

20-313 Handicap, defined.

Handicap shall mean, with respect to a person:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities;

(2) A record of having such an impairment; or

(3) Being regarded as having such an impairment.

Handicap shall not include current, illegal use of or addiction to a controlled substance as defined in section 28-401.

Source: Laws 1991, LB 825, § 14.

20-314 Person, defined.

Person shall include one or more individuals, corporations, partnerships, limited liability companies, associations, labor organizations, legal representa-

tives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

Source: Laws 1991, LB 825, § 15; Laws 1993, LB 121, § 147.

20-315 Rent, defined.

Rent shall include lease, sublease, let, and otherwise grant for consideration the right to occupy premises not owned by the occupant.

Source: Laws 1991, LB 825, § 16.

20-316 Respondent, defined.

Respondent shall mean:

(1) The person or other entity accused in a complaint of a discriminatory housing practice; and

(2) Any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 20-326.

Source: Laws 1991, LB 825, § 17.

20-317 Restrictive covenant, defined.

Restrictive covenant shall mean any specification limiting the transfer, rental, or lease of any housing because of race, creed, religion, color, national origin, sex, handicap, familial status, or ancestry.

Source: Laws 1991, LB 825, § 18.

20-318 Unlawful acts enumerated.

Except as exempted by section 20-322, it shall be unlawful to:

(1) Refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the sale or rental of or otherwise make unavailable or deny, refuse to show, or refuse to receive and transmit an offer for a dwelling to any person because of race, color, religion, national origin, familial status, or sex;

(2) Discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection therewith because of race, color, religion, national origin, familial status, or sex;

(3) Make, print, publish, or cause to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, national origin, handicap, familial status, or sex or an intention to make any such preference, limitation, or discrimination;

(4) Represent to any person because of race, color, religion, national origin, handicap, familial status, or sex that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available;

(5) Cause to be made any written or oral inquiry or record concerning the race, color, religion, national origin, handicap, familial status, or sex of a person seeking to purchase, rent, or lease any housing;

(6) Include in any transfer, sale, rental, or lease of housing any restrictive covenants or honor or exercise or attempt to honor or exercise any restrictive covenant pertaining to housing;

(7) Discharge or demote an employee or agent or discriminate in the compensation of such employee or agent because of such employee's or agent's compliance with the Nebraska Fair Housing Act; and

(8) Induce or attempt to induce, for profit, any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin, handicap, familial status, or sex.

Source: Laws 1969, c. 120, § 3, p. 540; Laws 1979, LB 80, § 64; R.S.1943, (1987), § 20-107; Laws 1991, LB 825, § 19.

20-319 Handicapped person; discriminatory practices prohibited; design and construction standards; enforcement of act.

(1) Except as exempted by section 20-322, it shall be unlawful to:

(a) Discriminate in the sale or rental of or otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap of:

(i) The buyer or renter;

(ii) Any person associated with the buyer or renter; or

(iii) A person residing in or intending to reside in the dwelling after it is so sold, rented, or made available; or

(b) Discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with a dwelling because of a handicap of:

(i) Such person;

(ii) Any person associated with such person; or

(iii) A person residing in or intending to reside in the dwelling after it is so sold, rented, or made available.

(2) For purposes of this section, discrimination shall include:

(a) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications may be necessary to afford the person full enjoyment of the premises, except that in the case of a rental, the landlord may, when it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford the handicapped person equal opportunity to use and enjoy a dwelling; and

(c) In connection with the design and construction of covered multifamily dwellings for first occupancy after September 1, 1991, a failure to design and construct the dwellings in such a manner that:

(i) The public use and common use portions of the dwellings are readily accessible to and usable by handicapped persons;

(ii) All the doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) All premises within the dwellings contain the following features of adaptive design:

(A) An accessible route into and through the dwelling;

(B) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(C) Reinforcements in bathroom walls to allow later installation of grab bars; and

(D) Kitchens and bathrooms such that a handicapped person in a wheelchair can maneuver about the space.

(3) Compliance with the appropriate requirements of the American National Standards Institute standard for buildings and facilities providing accessibility and usability for physically handicapped people, ANSI A117.1, shall satisfy the requirements of subdivision (2)(c)(iii) of this section.

(4)(a) If a political subdivision has incorporated into its laws the design and construction requirements set forth in subdivision (2)(c) of this section, compliance with such laws shall be deemed to satisfy the requirements.

(b) A political subdivision may review and approve new constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements are met.

(c) The commission shall encourage but may not require political subdivisions to include in their existing procedures for the review and approval of new constructed covered multifamily dwellings determinations as to whether the design and construction of the dwellings are consistent with the design and construction requirements and shall provide technical assistance to political subdivisions and other persons to implement the requirements.

(d) Nothing in this section shall be construed to require the commission to review or approve the plans, designs, or construction of all covered multifamily dwellings to determine whether the design and construction of the dwellings are consistent with the design and construction requirements.

(5)(a) Nothing in subsection (4) of this section shall be construed to affect the authority and responsibility of the commission or a local agency certified pursuant to section 20-332 to receive and process complaints or otherwise engage in enforcement activities under the Nebraska Fair Housing Act.

(b) Determinations by the commission or a political subdivision under subdivision (4)(a) or (b) of this section shall not be conclusive in enforcement proceedings under the act.

(6) For purposes of this section, covered multifamily dwellings shall mean:

(a) Buildings consisting of four or more units if such buildings have one or more elevators; and

(b) Ground floor units in other buildings consisting of four or more units.

(7) Nothing in this section shall be construed to invalidate or limit any law of a political subdivision or other jurisdiction in which this section is effective that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this section.

(8) Nothing in this section shall require that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

Source: Laws 1991, LB 825, § 20; Laws 1998, LB 1073, § 5.

20-320 Transaction related to residential real estate; discriminatory practices prohibited.

(1) It shall be unlawful for any person or other entity whose business includes engaging in transactions related to residential real estate to discriminate against any person in making available such a transaction or in the terms or conditions of such a transaction because of race, color, religion, sex, handicap, familial status, or national origin.

(2) For purposes of this section, transaction related to residential real estate shall mean any of the following:

(a) The making or purchasing of loans or providing other financial assistance:

(i) For purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(ii) Secured by residential real estate; or

(b) The selling, brokering, or appraising of residential real property.

(3) Nothing in this section shall prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

Source: Laws 1991, LB 825, § 21.

20-321 Multiple listing service; other service, organization, or facility; discriminatory practices prohibited.

It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers organization, or other service, organization, or facility relating to the business of selling or renting dwellings or to discriminate against any person in the terms or conditions of such access, membership, or participation on account of race, color, religion, national origin, handicap, familial status, or sex.

Source: Laws 1969, c. 120, § 5, p. 542; Laws 1979, LB 80, § 66; R.S.1943, (1987), § 20-109; Laws 1991, LB 825, § 22.

20-322 Religious organization, private home, private club, or housing for older persons; restricting use not prohibited; local restrictions; how treated; controlled substances; illegal activities; effect.

(1) Nothing in the Nebraska Fair Housing Act shall prohibit a religious organization, association, or society or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from limiting the sale, rental, or occupancy of a dwelling which it owns or operates for other than commercial purposes to persons of the same religion or from giving preferences to such persons unless membership in such religion is restricted on account of race, color, national origin, handicap, familial status, or sex.

(2) Nothing in the act shall prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than commercial purposes, from limiting the rental or occupancy of such lodging to its members or from giving preference to its members.

(3) Nothing in the act shall prohibit or limit the right of any person or his or her authorized representative to refuse to rent a room or rooms in his or her own home for any reason or for no reason or to change tenants in his or her own home as often as desired, except that this exception shall not apply to any person who makes available for rental or occupancy more than four sleeping rooms to a person or family within his or her own home.

(4)(a) Nothing in the act shall limit the applicability of any reasonable local restrictions regarding the maximum number of occupants permitted to occupy a dwelling, and nothing in the act regarding familial status shall apply with respect to housing for older persons.

(b) For purposes of this subsection, housing for older persons shall mean housing:

(i) Provided under any state program that the commission determines is specifically designed and operated to assist elderly persons as defined in the program;

(ii) Intended for and solely occupied by persons sixty-two years of age or older; or

(iii) Intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subdivision, the commission shall develop regulations which require at least the following factors:

(A) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons or, if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons;

(B) That at least eighty percent of the units are occupied by at least one person fifty-five years of age or older per unit; and

(C) The publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.

(c) Housing shall not fail to meet the requirements for housing for older persons by reason of:

(i) Persons residing in the housing as of September 6, 1991, who do not meet the age requirements of subdivision (b)(ii) or (iii) of this subsection if succeeding occupants of the housing meet the age requirements; or

(ii) Unoccupied units if the units are reserved for occupancy by persons who meet the age requirements.

(5) Nothing in the act shall prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 28-401.

Source: Laws 1969, c. 120, § 6, p. 542; Laws 1979, LB 80, § 67; R.S.1943, (1987), § 20-110; Laws 1991, LB 825, § 23.

20-323 Affirmative action required; cooperation with commission.

All executive departments, state agencies, and independent instrumentalities exercising essential public functions, including any state agency having regulatory or supervisory authority over financial institutions, shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of the Nebraska Fair Housing Act and shall cooperate with the commission to further such purposes.

Source: Laws 1991, LB 825, § 24.

20-324 Equal Opportunity Commission; educational and conciliatory activities; programs of compliance and enforcement.

The commission shall conduct such educational and conciliatory activities as in the commission's judgment will further the purposes of the Nebraska Fair Housing Act. The commission shall call conferences of persons in the housing industry and other interested persons to acquaint them with the act and suggested means of implementing it and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. The commission shall consult with local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their locality and whether and how local enforcement programs might be utilized to combat such discrimination in connection with or in place of the commission's enforcement of the act. The commission shall issue reports on such conferences and consultations as it deems appropriate.

Source: Laws 1969, c. 120, § 8, p. 543; R.S.1943, (1987), § 20-112; Laws 1991, LB 825, § 25.

20-325 Commission; duties.

The commission shall:

(1) Make studies with respect to the nature and extent of discriminatory housing practices in representative urban, suburban, and rural communities throughout the state;

(2) Publish and disseminate reports, recommendations, and information derived from such studies, including an annual report to the Legislature:

(a) Specifying the nature and extent of progress made statewide in eliminating discriminatory housing practices and furthering the purposes of the Nebraska Fair Housing Act, obstacles remaining to achieving equal housing opportunity, and recommendations for further legislative or executive action; and

(b) Containing tabulations of the number of instances and the reasons therefor in the preceding year in which:

(i) Investigations have not been completed as required by subdivision (1)(b) of section 20-326;

(ii) Determinations have not been made within the time specified in section 20-333; and

(iii) Hearings have not been commenced or findings and conclusions have not been made as required by section 20-337;

(3) Cooperate with and render technical assistance to state, local, and other public or private agencies, organizations, and institutions which are formulat-

ing or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) Annually report to the Legislature and make available to the public data on the age, race, color, religion, national origin, handicap, familial status, and sex of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of programs administered by the commission. In order to develop the data to be included and made available to the public under this subdivision, the commission shall, without regard to any other provision of law, collect such information relating to those characteristics as the commission determines to be necessary or appropriate;

(5) Adopt and promulgate rules and regulations, subject to the approval of the members of the commission, regarding the investigative and conciliation process that provide for testing standards, fundamental due process, and notice to the parties of their rights and responsibilities; and

(6) Have authority to enter into agreements with the United States Department of Housing and Urban Development in cooperative agreements under the Fair Housing Assistance Program. The commission shall further have the authority to enter into agreements with testing organizations to assist in investigative activities. The commission shall not enter into any agreements under which compensation to the testing organization is partially or wholly based on the number of conciliations, settlements, and reasonable cause determinations.

Source: Laws 1991, LB 825, § 26; Laws 2005, LB 361, § 25.

20-326 Discriminatory housing practice; complaint; procedure; investigation.

(1)(a)(i) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the commission alleging such discriminatory housing practice. The commission, on its own initiative, may also file such a complaint.

(ii) The complaint shall be in writing and shall contain such information and be in such form as the commission requires.

(iii) The commission may also investigate housing practices to determine whether a complaint should be brought under this section.

(b) Upon the filing of a complaint:

(i) The commission shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under the Nebraska Fair Housing Act;

(ii) The commission shall, not later than ten days after such filing or the identification of an additional respondent under subsection (2) of this section, serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under the act, together with a copy of the original complaint;

(iii) Each respondent may file, not later than ten days after receipt of notice from the commission, an answer to the complaint; and

(iv) Unless it is impracticable to do so, the commission shall investigate the alleged discriminatory housing practice and complete such investigation within one hundred days after the filing of the complaint or, when the commission

takes further action under section 20-332 with respect to a complaint, within one hundred days after the commencement of such further action.

(c) If the commission is unable to complete the investigation within one hundred days after the filing of the complaint or after the commencement of such further action, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

(d) Complaints and answers shall be under oath and may be reasonably and fairly amended at any time.

(2)(a) A person who is not named as a respondent in a complaint but who is identified as a respondent in the course of investigation may be joined as an additional or substitute respondent upon written notice under subdivision (1)(b)(ii) of this section to such person from the commission.

(b) The notice shall explain the basis for the commission's belief that the person to whom the notice is addressed is properly joined as a respondent.

Source: Laws 1991, LB 825, § 27; Laws 2004, LB 625, § 1; Laws 2005, LB 361, § 26.

20-327 Complaint; conciliation; conciliation agreement; effect.

(1) During the period beginning with the filing of the complaint and ending with the issuance of a charge or a dismissal by the commission, the commission shall, to the extent feasible, engage in conciliation with respect to the complaint.

(2) A conciliation agreement shall be an agreement between the complainant and the respondent and shall be subject to the approval of the members of the commission, which approval may not be delegated.

(3) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant and shall be subject to approval by the commission.

(4) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(5) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of the Nebraska Fair Housing Act.

(6) A conciliation agreement between a respondent and complainant which has been approved by the commission shall not be deemed an adjudication that the respondent has committed a discriminatory housing practice nor shall the conciliation agreement be the subject of an order for relief under section 20-337, unless the conciliation agreement is entered after an adjudication pursuant to an administrative proceeding or a civil action pursuant to state or federal law in which the respondent was found to have committed a discriminatory housing practice.

Source: Laws 1991, LB 825, § 28; Laws 2005, LB 361, § 27.

20-328 Final investigative report; contents; amendment.

(1) At the end of each investigation of a complaint, the commission shall prepare a final investigative report containing:

(a) The names and dates of contacts with witnesses;

(b) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(c) A summary description of other pertinent records;

(d) A summary of witness statements; and

(e) Answers to interrogatories.

(2) A final investigative report may be amended if additional evidence is later discovered.

Source: Laws 1991, LB 825, § 29.

20-329 Conciliation agreement; breach; civil action authorized.

Whenever the commission has reasonable cause to believe that a respondent has breached a conciliation agreement, the commission shall refer the matter to the Attorney General for filing of a civil action under section 20-343 for the enforcement of such agreement.

Source: Laws 1991, LB 825, § 30.

20-330 Conciliation proceedings; investigations; restrictions on use of information.

(1) Except as provided in subsection (5) of section 20-327, nothing said or done in the course of conciliation may be made public or used as evidence in a subsequent proceeding under the Nebraska Fair Housing Act without the written consent of the persons concerned. All records compiled in the course of conciliation activities shall be exempt from public release. The commission may release any fully executed conciliation agreement.

(2)(a) Notwithstanding subsection (1) of this section, the commission shall make available to the aggrieved person and the respondent, upon request, following the completion of an investigation, information derived from an investigation and any final investigative report relating to that investigation.

(b) The commission's release of information pursuant to subdivision (2)(a) of this section is subject to the federal Privacy Act of 1974, Public Law 93-579, as such act existed on January 1, 2005, and any other state or federal laws limiting the release of confidential information obtained in the course of an investigation under the Nebraska Fair Housing Act.

(3) Notwithstanding subsections (1) and (2) of this section, materials in the investigative file shall be disclosed to the complainant and respondent to the extent reasonably necessary to further the investigation or conciliation discussions.

Source: Laws 1991, LB 825, § 31; Laws 2004, LB 625, § 2; Laws 2005, LB 361, § 28.

20-331 Temporary or preliminary relief; other proceedings; actions authorized.

(1) If the commission concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of the Nebraska Fair Housing Act, the commission may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such an authorization, the

Attorney General shall promptly commence and maintain such an action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with sections 25-1062 to 25-1080. The commencement of a civil action under this section shall not affect the initiation or continuation of administrative proceedings under this section and section 20-336.

(2) Whenever the commission has reason to believe that a basis may exist for the commencement of proceedings against any respondent under subsection (1) or (3) of section 20-343 or for proceedings by any governmental licensing or supervisory authorities, the commission shall transmit the information upon which such belief is based to the Attorney General or to such authorities, as the case may be.

Source: Laws 1991, LB 825, § 32.

20-332 Complaint; referral to local agency; procedure; certification of local agency.

(1) Whenever a complaint alleges a discriminatory housing practice (a) within the jurisdiction of a local agency in an incorporated city or a county and (b) as to which the agency has been certified by the commission under this section, the commission shall refer the complaint to that agency before taking any action with respect to the complaint.

(2) After a referral is made, the commission shall take no further action with respect to such complaint without the consent of the agency unless:

(a) The agency has failed to commence proceedings with respect to the complaint before the end of the thirtieth day after the date of such referral;

(b) The agency, having so commenced proceedings, fails to carry forward the proceedings with reasonable promptness; or

(c) The commission determines that the agency no longer qualifies for certification under this section with respect to the relevant jurisdiction.

(3)(a) The commission may certify a local agency under this section only if the commission determines that the following are substantially equivalent to those created by and under the Nebraska Fair Housing Act:

(i) The substantive rights protected by the agency in the jurisdiction with respect to which certification is to be made;

(ii) The procedures followed by the agency;

(iii) The remedies available to the agency; and

(iv) The availability of judicial review of the agency's action.

(b) Before making such certification, the commission shall take into account the current practices and past performance, if any, of the agency.

Source: Laws 1991, LB 825, § 33.

20-333 Commission; discriminatory housing practice; determination; charge; contents; service; referral to Attorney General; dismissal of complaint.

(1)(a) The commission shall, within one hundred days after the filing of the complaint or after the commencement of further action under section 20-332, determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur unless it is impracticable to do so or unless the commission has approved a conciliation

agreement with respect to the complaint. If the commission is unable to make the determination within one hundred days after the filing of the complaint or after the commencement of such further action, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

(b)(i) If the commission determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall, except as provided in subdivision (iii) of this subdivision, immediately issue a charge on behalf of the aggrieved person, for further proceedings under sections 20-335 to 20-340.

(ii) Such charge shall consist of a short and plain statement of the facts upon which the commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur, shall be based on the final investigative report, and need not be limited to the facts or grounds alleged in the complaint filed under section 20-326.

(iii) If the commission determines that the matter involves the legality of any state or local zoning or other land-use law or ordinance, the commission shall immediately refer the matter to the Attorney General for appropriate action under section 20-343 instead of issuing such charge.

(c) If the commission determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall promptly dismiss the complaint. The commission shall make public disclosure of each such dismissal.

(d) The commission may not issue a charge under this section regarding an alleged discriminatory housing practice after the filing of a civil action commenced by the aggrieved party under state or federal law seeking relief with respect to that discriminatory housing practice.

(2) After the commission issues a charge under this section, the commission shall cause a copy of the charge, together with information as to how to make an election under section 20-335 and the effect of such an election, to be served:

(a) On each respondent named in the charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless such an election is made; and

(b) On each aggrieved person on whose behalf the complaint was filed.

Source: Laws 1991, LB 825, § 34.

20-334 Commission; subpoenas; discovery orders; violations; penalty.

(1) The commission may issue subpoenas and order discovery in aid of investigations and hearings under the Nebraska Fair Housing Act. The subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the district court.

(2) Witnesses summoned by a subpoena shall be entitled to the same witness and mileage fees as witnesses in proceedings in district court. Fees payable to a witness summoned by a subpoena issued at the request of a party shall be paid by that party or, when a party is unable to pay the fees, by the commission.

(3)(a) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence,

if it is in such person's power to do so, in obedience to the subpoena or other lawful order under subsection (1) of this section shall be guilty of a Class I misdemeanor.

(b) Any person shall be guilty of a Class I misdemeanor who, with intent to mislead another person in any proceeding under the act:

(i) Makes or causes to be made any false entry or statement of fact in any report, account, record, or other document produced pursuant to subpoena or other lawful order under subsection (1) of this section;

(ii) Willfully neglects or fails to make or to cause to be made full, true, and correct entries in such reports, accounts, records, or other documents; or

(iii) Willfully mutilates, alters, or by any other means falsifies any documentary evidence.

Source: Laws 1991, LB 825, § 35.

20-335 Civil action in lieu of hearing; election authorized.

When a charge is issued under section 20-333, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in that charge decided in a civil action under section 20-340 in lieu of a hearing under section 20-336. The election must be made not later than twenty days after service has been made under section 20-333. The person making the election shall give notice of doing so to the commission and to all other complainants and respondents to whom the charge relates.

Source: Laws 1991, LB 825, § 36.

20-336 Commission; hearings; hearing officer; appearance; discovery; discontinuance of proceedings; when.

(1) If an election is not made under section 20-335 with respect to a charge issued under section 20-333, the commission shall provide an opportunity for a hearing on the record with respect to the charge. The commission shall delegate the conduct of a hearing under this section to a hearing officer. The hearing officer shall meet the qualifications of a judge of the district court prescribed in section 24-301 or any successor statute. The hearing officer shall be appointed by the commission pursuant to rules and regulations promulgated by the commission. The hearing officer shall conduct the hearing at a place in the vicinity of the place where the discriminatory housing practice is alleged to have occurred or to be about to occur.

(2) At the hearing each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas under section 20-334. Any aggrieved person may intervene as a party in the proceeding. The rules of evidence shall apply to the presentation of evidence in such hearing as they would in a civil action in district court.

(3)(a) Discovery in administrative proceedings under this section shall be conducted as expeditiously and inexpensively as possible consistent with the need of all parties to obtain relevant evidence.

(b) A hearing under this section shall be conducted as expeditiously and inexpensively as possible consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(4) Any resolution of a charge before issuance of a final order under section 20-337 shall require the consent of the aggrieved person on whose behalf the charge is issued.

(5) A hearing officer may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after the filing of a civil action by the aggrieved party under state or federal law seeking relief with respect to that discriminatory housing practice.

Source: Laws 1991, LB 825, § 37.

20-337 Hearing officer; powers and duties; civil penalties; order; effect.

(1) The hearing officer shall commence the hearing no later than one hundred twenty days following the issuance of the charge unless it is impracticable to do so. If the hearing officer is unable to commence the hearing within one hundred twenty days, he or she shall notify the commission, the aggrieved person on whose behalf the charge was issued, and the respondent in writing of the reasons for not doing so.

(2) The hearing officer shall make findings of fact and conclusions of law within sixty days after the end of the hearing unless it is impracticable to do so. If the hearing officer is unable to make findings of fact and conclusions of law within such period or any succeeding sixty-day period thereafter, he or she shall notify the commission, the aggrieved person on whose behalf the charge was issued, and the respondent in writing of the reasons for not doing so.

(3)(a) If the hearing officer finds that a respondent has engaged or is about to engage in a discriminatory housing practice, he or she shall promptly issue an order for such relief as may be appropriate which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief.

(b) Subject to subdivision (c) of this subsection, the order may, to vindicate the public interest, assess a civil penalty against the respondent:

(i) In an amount not exceeding ten thousand dollars if the respondent has not been adjudged to have committed any prior discriminatory housing practice or if subdivision (ii) or (iii) of this subdivision does not apply;

(ii) In an amount not exceeding twenty-five thousand dollars if the respondent has been adjudged to have committed one other discriminatory housing practice during the five-year period ending on the date of the issuance of the current charge; or

(iii) In an amount not exceeding fifty thousand dollars if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the issuance of the current charge.

(c) If the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same individual who has been previously adjudged to have committed acts constituting a discriminatory housing practice, the civil penalties set forth in subdivisions (b)(ii) and (iii) of this subsection may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(4) No such order shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the charge.

(5) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to licensing or regulation by a governmental agency, the commission shall, not later than thirty days after the date of the issuance of the order or, if the order is judicially reviewed, thirty days after the order is in substance affirmed upon such review:

(a) Send copies of the findings of fact, conclusions of law, and the order to that governmental agency; and

(b) Recommend to that governmental agency appropriate disciplinary action, including, when appropriate, the suspension or revocation of the license of the respondent.

(6) In the case of an order against a respondent against whom another order was issued under this section within the preceding five years, the commission shall send a copy of each such order to the Attorney General.

(7) If the hearing officer finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, he or she shall enter an order dismissing the charge. The commission shall make public disclosure of each such dismissal.

Source: Laws 1991, LB 825, § 38.

20-338 Finding, conclusion, or order; review; final order; service.

(1) The commission may review any finding, conclusion, or order issued under section 20-337. The review shall be completed not later than thirty days after the finding, conclusion, or order is so issued or the finding, conclusion, or order will become final.

(2) The commission shall cause the findings of fact and conclusions of law made with respect to any final order for relief, together with a copy of such order, to be served on each aggrieved person and each respondent in the proceeding.

Source: Laws 1991, LB 825, § 39.

20-339 Appeal; enforcement of hearing officer's order; procedure.

(1) Any party aggrieved by a final order granting or denying in whole or in part the relief sought may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act, except that venue of the proceeding shall be in the county in which the discriminatory housing practice is alleged to have occurred.

(2)(a) The commission may petition the district court for the county in which the discriminatory housing practice is alleged to have occurred or in which any respondent resides or transacts business for the enforcement of the order of the hearing officer and for appropriate temporary relief or restraining order.

(b) The commission shall file in court with the petition the record in the proceeding. A copy of such petition shall be transmitted by the clerk of the court to the parties to the proceeding before the hearing officer.

(3)(a) Upon the filing of a petition under subsection (1) or (2) of this section, the court may:

(i) Grant to the petitioner or any other party such temporary relief, restraining order, or other order as the court deems just and proper;

(ii) Affirm, modify, or set aside the order, in whole or in part, or remand the order for further proceedings; and

(iii) Enforce the order to the extent that the order is affirmed or modified.

(b) Any party to the proceeding before the hearing officer may intervene in the district court.

(c) An objection not made before the hearing officer shall not be considered by the court unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

(4) If no appeal is filed before the expiration of forty-five days after the date the hearing officer's order is entered, the hearing officer's findings of fact and order shall be conclusive in connection with any petition for enforcement:

(a) Which is filed by the commission under subsection (2) of this section after the end of such forty-fifth day; or

(b) Under subsection (5) of this section.

(5) If before the expiration of sixty days after the date the hearing officer's order is entered no appeal has been filed and the commission has not sought enforcement of the order under subsection (2) of this section, any person entitled to relief under the order may petition for a decree enforcing the order in the district court for the county in which the discriminatory housing practice is alleged to have occurred.

(6) The district court in which a petition for enforcement is filed under subsection (2) or (5) of this section shall enter a decree enforcing the order. The clerk of the court shall transmit a copy of such decree to the commission, the respondent named in the petition, and any other parties to the proceeding before the hearing officer.

Source: Laws 1991, LB 825, § 40.

Cross References

Administrative Procedure Act, see section 84-920.

20-340 Civil action in lieu of hearing; relief authorized.

(1) If an election is made under section 20-335 to have the claims asserted in the charge decided in a civil action, the commission shall authorize, and not later than thirty days after the election is made the Attorney General shall commence and maintain, a civil action on behalf of the aggrieved person in the appropriate district court seeking relief under this section.

(2) Any aggrieved person with respect to the issues to be determined in a civil action under this section may intervene as of right.

(3) In a civil action under this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant any relief which a court could grant with respect to such discriminatory housing practice in a civil action under section 20-342. Any relief so granted that would accrue to an aggrieved person in such a civil action shall also accrue to that aggrieved person in a civil action under this section. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

Source: Laws 1991, LB 825, § 41.

The 30-day limitation of this section is mandatory and not directory. State, Neb. Equal Opportunity Com'n ex rel. Minter v. Jensen, 259 Neb. 275, 609 N.W.2d 362 (2000).

20-341 Attorney's fees and costs; when allowed.

In any administrative proceeding brought under section 20-336, any court proceeding arising from such a proceeding, or any civil action under section 20-340, the hearing officer or the court, as the case may be, may allow the prevailing party, other than the state, reasonable attorney's fees and costs. The state shall be liable for such fees and costs to the same extent as a private person.

Source: Laws 1991, LB 825, § 42.

20-342 Statute of limitations; civil action; rights and duties of parties; remedies allowed; attorney's fees and costs.

(1)(a)(i) An aggrieved person may commence a civil action in an appropriate district court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice or the breach of a conciliation agreement entered into under section 20-327, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(ii) The computation of such two-year period shall not include any time during which an administrative proceeding under section 20-336 is pending with respect to a complaint or charge under the Nebraska Fair Housing Act based upon such discriminatory housing practice. This subdivision shall not apply to actions arising from a breach of a conciliation agreement.

(b) An aggrieved person may commence a civil action under this section whether or not a complaint has been filed under section 20-326 and without regard to the status of any such complaint, but if the commission or a local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this section by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for the complaint except for the purpose of enforcing the terms of the agreement.

(c) An aggrieved person may not commence a civil action under this section with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the commission if a hearing officer has commenced a hearing on the record under section 20-336 with respect to such charge.

(2) Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may, if in the opinion of the court the person is financially unable to bear the costs of an action:

(a) Appoint an attorney for the person; or

(b) Authorize the commencement or continuation of a civil action under subsection (1) of this section without the payment of fees, costs, or security.

(3)(a) In a civil action under subsection (1) of this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual damages and, subject to subsection (4) of this section, may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other

order, including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate.

(b) In a civil action under subsection (1) of this section, the court may allow the prevailing party, other than the state, reasonable attorney's fees and costs. The state shall be liable for such fees and costs to the same extent as a private person.

(4) Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the filing of a complaint with the commission or a civil action under the act.

(5) Upon timely application, the Attorney General may intervene in the civil action if the Attorney General certifies that the case is of general public importance. Upon intervention the Attorney General may obtain such relief as would be available under section 20-343.

Source: Laws 1991, LB 825, § 43.

20-343 Attorney General; civil action; powers and duties; relief authorized; intervention; when permitted.

(1) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by the Nebraska Fair Housing Act or that any group of persons has been denied any of the rights granted by the act and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate district court.

(2)(a) The Attorney General may commence a civil action in any appropriate district court for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the commission under section 20-337. The action may be commenced not later than the expiration of eighteen months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(b) The Attorney General may commence a civil action in any appropriate district court for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the commission under section 20-329. The action may be commenced not later than the expiration of ninety days after the referral of the alleged breach under such section.

(3) The Attorney General, on behalf of the commission or other party at whose request a subpoena is issued under section 20-334, may enforce the subpoena in appropriate proceedings in the district court for the county in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(4)(a) In a civil action under subsection (1) or (2) of this section, the court:

(i) May award such temporary relief, including a permanent or temporary injunction, a restraining order, or any other order against the person responsible for a violation of the act as is necessary to assure the full enjoyment of the rights granted by the act;

(ii) May award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and

(iii) May, to vindicate the public interest, assess a civil penalty against the respondent:

(A) In an amount not exceeding fifty thousand dollars for a first violation; and

(B) In an amount not exceeding one hundred thousand dollars for any subsequent violation.

(b) In a civil action under this section, the court may allow the prevailing party, other than the state, reasonable attorney's fees and costs. The state shall be liable for such fees and costs to the same extent as a private person.

(5) Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (1) or (2) of this section which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under section 20-342.

Source: Laws 1991, LB 825, § 44.

20-344 Violations; penalty.

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of enjoyment of or on account of the person having exercised or enjoyed or having aided and encouraged any other person in the exercise of benefits and rights guaranteed by the Nebraska Fair Housing Act. Any person who violates this section shall be guilty of a Class I misdemeanor.

Source: Laws 1969, c. 120, § 17, p. 550; R.S.1943, (1987), § 20-121; Laws 1991, LB 825, § 45.

ARTICLE 4

RIGHTS OF THE TERMINALLY ILL

Section

20-401 Act, how cited.

Sections 20-401 to 20-416 shall be known and may be cited as the Rights of the Terminally Ill Act.

Source: Laws 1992, LB 671, § 1.

20-402 Statement of policy.

(1) The Legislature recognizes the common-law right and a constitutionally protected liberty interest for people to direct their medical treatment. The exercise of such right and liberty interest is subject to certain state interests in preserving life, preventing homicide and suicide, protecting dependent third parties, and maintaining the integrity of the medical profession. The Legislature adopts the Rights of the Terminally Ill Act to provide one means, by use of the declaration described in the act, for people to exercise their rights. Unjustifiable violation of a patient's direction shall be a civil cause of action maintainable by the patient or the patient's next of kin. Remedy in law and equity may be granted by a court of competent jurisdiction.

(2) It is the public policy of this state that no existing right be terminated or restricted by the Rights of the Terminally Ill Act.

Source: Laws 1992, LB 671, § 2.

20-403 Definitions.

For purposes of the Rights of the Terminally Ill Act, unless the context otherwise requires:

(1) Adult shall mean any person who is nineteen years of age or older or who is or has been married;

(2) Attending physician shall mean the physician who has primary responsibility for the treatment and care of the patient;

(3) Declaration shall mean a writing executed in accordance with the requirements of subsection (1) of section 20-404;

(4) Health care provider shall mean a person who is licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession;

(5) Life-sustaining treatment shall mean any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the process of dying or maintain the qualified patient in a persistent vegetative state;

(6) Persistent vegetative state shall mean a medical condition that, to a reasonable degree of medical certainty as determined in accordance with currently accepted medical standards, is characterized by a total and irreversible loss of consciousness and capacity for cognitive interaction with the environment and no reasonable hope of improvement;

(7) Person shall mean an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity;

(8) Physician shall mean an individual licensed to practice medicine in this state;

(9) Qualified patient shall mean an adult who has executed a declaration and who has been determined by the attending physician to be in a terminal condition or a persistent vegetative state;

(10) State shall mean a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States; and

(11) Terminal condition shall mean an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of the attending physician, result in death within a relatively short time.

Source: Laws 1992, LB 671, § 3; Laws 1993, LB 121, § 148.

20-404 Declaration relating to use of life-sustaining treatment.

(1) An adult of sound mind may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment. The declaration must be signed by the declarant or another person at the declarant's direction and witnessed by two adults or a notary public. No more than one witness to a declaration shall be an administrator or employee of a health care provider who is caring for or treating the declarant, and no witness shall be an employee of a life or health insurance provider for the declarant. The restrictions upon who may witness the signing shall not apply to a notary public.

(2) A declaration directing a physician to withhold or withdraw life-sustaining treatment may, but need not, be in the form provided in this subsection.

DECLARATION

If I should lapse into a persistent vegetative state or have an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I direct my attending physician, pursuant to the Rights of the Terminally Ill Act, to withhold or withdraw life sustaining treatment that is not necessary for my comfort or to alleviate pain.

Signed this .... day of ..... .

Signature .....
Address .....

The declarant voluntarily signed this writing in my presence.

Witness .....
Address .....
Witness .....
Address .....

Or

The declarant voluntarily signed this writing in my presence.

.....
Notary Public

(3) A physician or other health care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical record and, if unwilling to comply with the declaration, shall promptly so advise the declarant.

Source: Laws 1992, LB 671, § 4.

20-405 When declaration operative.

A declaration shall become operative when (1) it is communicated to the attending physician, (2) the declarant is determined by the attending physician to be in a terminal condition or in a persistent vegetative state, (3) the declarant

is determined by the attending physician to be unable to make decisions regarding administration of life-sustaining treatment, and (4) the attending physician has notified a reasonably available member of the declarant's immediate family or guardian, if any, of his or her diagnosis and of the intent to invoke the patient's declaration. When the declaration becomes operative, the attending physician and other health care providers shall act in accordance with its provisions or comply with the transfer requirements of section 20-409.

Source: Laws 1992, LB 671, § 5.

20-406 Revocation of declaration.

(1) A declarant may revoke a declaration at any time and in any manner without regard to the declarant's mental or physical condition. A revocation shall be effective upon its communication to the attending physician or other health care provider by the declarant or a witness to the revocation.

(2) The attending physician or other health care provider shall make the revocation a part of the declarant's medical record.

Source: Laws 1992, LB 671, § 6.

20-407 Recording determination of terminal condition and declaration.

When the attending physician has knowledge of a declaration and, after personal examination, has determined that a declarant is in a terminal condition or in a persistent vegetative state, the attending physician shall record the diagnosis, determination, and the terms of the declaration, in writing, in the declarant's medical record.

Source: Laws 1992, LB 671, § 7.

20-408 Treatment of qualified patients.

(1) A qualified patient may make decisions regarding life-sustaining treatment so long as the patient is able to do so.

(2) The Rights of the Terminally Ill Act shall not affect the responsibility of the attending physician or other health care provider to provide treatment, including nutrition and hydration, for a patient's comfort care or alleviation of pain.

(3) Life-sustaining treatment shall not be withheld or withdrawn pursuant to a declaration from an individual known to the attending physician to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment.

Source: Laws 1992, LB 671, § 8.

20-409 Transfer of patients.

An attending physician or other health care provider who is unwilling to comply with the Rights of the Terminally Ill Act shall take all reasonable steps as promptly as practicable to transfer care of the declarant to another physician or health care provider who is willing to do so.

Source: Laws 1992, LB 671, § 9.

20-410 Immunities.

(1) A physician or other health care provider shall not be subject to civil or criminal liability or discipline for unprofessional conduct for giving effect to a declaration in the absence of knowledge of the revocation of a declaration.

(2) A physician or other health care provider whose action under the Rights of the Terminally Ill Act is in accord with reasonable medical standards shall not be subject to criminal or civil liability, or discipline for unprofessional conduct, with respect to that action.

Source: Laws 1992, LB 671, § 10.

20-411 Penalties.

(1) A physician or other health care provider who willfully fails to transfer the care of a patient in accordance with section 20-409 shall be guilty of a Class I misdemeanor.

(2) A physician who willfully fails to record a determination of terminal condition or persistent vegetative state or the terms of a declaration in accordance with section 20-407 shall be guilty of a Class I misdemeanor.

(3) An individual who willfully conceals, cancels, defaces, or obliterates the declaration of another individual without the declarant's consent or who falsifies or forges a revocation of the declaration of another individual shall be guilty of a Class I misdemeanor.

(4) An individual who falsifies or forges the declaration of another individual or willfully conceals or withholds personal knowledge of a revocation under section 20-406 shall be guilty of a Class I misdemeanor.

(5) A person who requires or prohibits the execution of a declaration as a condition for being insured for, or receiving, health care services shall be guilty of a Class I misdemeanor.

(6) A person who coerces or fraudulently induces an individual to execute a declaration shall be guilty of a Class I misdemeanor.

(7) The penalties provided in this section shall not displace any sanction applicable under other law.

Source: Laws 1992, LB 671, § 11.

20-412 Miscellaneous provisions.

(1) Death resulting from the withholding or withdrawal of life-sustaining treatment in accordance with the Rights of the Terminally Ill Act shall not constitute, for any purpose, a suicide or homicide.

(2) The making of a declaration pursuant to section 20-404 shall not affect the sale, procurement, or issuance of a policy of life insurance or annuity or affect, impair, or modify the terms of an existing policy of life insurance or annuity. A policy of life insurance or annuity shall not be legally impaired or invalidated by the withholding or withdrawal of life-sustaining treatment from an insured, notwithstanding any term to the contrary.

(3) No person shall prohibit or require the execution of a declaration as a condition to being insured for or receiving health care services. No insurance company or health care provider shall charge a higher or lower rate for signers of declarations under the act as opposed to nonsigners.

(4) The act shall create no presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to

the use, withholding, or withdrawal of life-sustaining treatment in the event of a terminal condition.

(5) The act shall not affect the right of a patient to make decisions regarding use of life-sustaining treatment so long as the patient is able to do so or impair or supersede a right or responsibility that a person has to effect the withholding or withdrawal of medical care.

(6) The act shall not require a physician or other health care provider to take action contrary to reasonable medical standards.

(7) The act shall not confer any new rights regarding the provision or rejection of any specific medical treatment and shall not alter any existing laws concerning homicide, suicide, or assisted suicide. Nothing in the act shall be construed to condone, authorize, or approve homicide, suicide, or assisted suicide.

Source: Laws 1992, LB 671, § 12.

20-413 When health care provider may presume validity of declaration.

In the absence of knowledge to the contrary, a physician or other health care provider may assume that a declaration complies with the Rights of the Terminally Ill Act and is valid.

Source: Laws 1992, LB 671, § 13.

20-414 Recognition of declaration executed in another state.

A declaration executed in another state in compliance with the law of that state or of this state shall be valid for purposes of the Rights of the Terminally Ill Act.

Source: Laws 1992, LB 671, § 14.

20-415 Effect of previous declaration.

An instrument executed anywhere before July 15, 1992, which substantially complies with subsection (1) of section 20-404 shall be effective under the Rights of the Terminally Ill Act.

Source: Laws 1992, LB 671, § 15.

20-416 Uniformity of application and construction.

The Rights of the Terminally Ill Act shall be applied and liberally construed so as to effectuate its general purposes.

Source: Laws 1992, LB 671, § 16.

ARTICLE 5

RACIAL PROFILING

Section

20-501 Racial profiling; legislative intent.

Racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society. It is abhorrent and cannot be tolerated. Motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.

Source: Laws 2001, LB 593, § 1.

20-502 Racial profiling prohibited.

(1) No member of the Nebraska State Patrol or a county sheriff's office, officer of a city or village police department, or member of any other law enforcement agency in this state shall engage in racial profiling. The disparate treatment of an individual whose motor vehicle has been stopped by a law enforcement officer is inconsistent with this policy.

(2) Racial profiling shall not be used to justify the detention of an individual or to conduct a motor vehicle stop.

Source: Laws 2001, LB 593, § 2.

20-503 Terms, defined.

For purposes of sections 20-501 to 20-506:

(1) Disparate treatment means differential treatment of persons on the basis of race, color, or national origin;

(2) Motor vehicle stop means any stop of a motor vehicle, except for a stop of a motor truck, truck-tractor, semitrailer, trailer, or towed vehicle at a state weighing station; and

(3) Racial profiling means detaining an individual or conducting a motor vehicle stop based upon disparate treatment of an individual.

Source: Laws 2001, LB 593, § 3; Laws 2004, LB 1162, § 1.

20-504 Written policy; records maintained; immunity.

(1) On or before January 1, 2002, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall adopt a written policy that prohibits the detention of any person or a motor vehicle stop when such action is motivated by racial profiling and the action would constitute a violation of the civil rights of the person.

(2) With respect to a motor vehicle stop, on and after January 1, 2002, and until January 1, 2010, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall record and retain the following information using the form developed and promulgated pursuant to section 20-505:

(a) The number of motor vehicle stops;

(b) The characteristics of race or ethnicity of the person stopped. The identification of such characteristics shall be based on the observation and perception of the law enforcement officer responsible for reporting the motor vehicle stop and the information shall not be required to be provided by the person stopped;

(c) If the stop is for a law violation, the nature of the alleged law violation that resulted in the motor vehicle stop;

(d) Whether a warning or citation was issued, an arrest made, or a search conducted as a result of the motor vehicle stop. Search does not include a search incident to arrest or an inventory search; and

(e) Any additional information that the Nebraska State Patrol, the county sheriffs, all city and village police departments, or any other law enforcement agency in this state, as the case may be, deems appropriate.

(3) The Nebraska Commission on Law Enforcement and Criminal Justice may develop a uniform system for receiving allegations of racial profiling. The Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall provide to the commission (a) a copy of each allegation of racial profiling received and (b) written notification of the review and disposition of such allegation. No information revealing the identity of the law enforcement officer involved in the stop shall be used, transmitted, or disclosed in violation of any collective bargaining agreement provision or personnel rule under which such law enforcement officer is employed. No information revealing the identity of the complainant shall be used, transmitted, or disclosed in the form alleging racial profiling.

(4) Any law enforcement officer who in good faith records information on a motor vehicle stop pursuant to this section shall not be held civilly liable for the act of recording such information unless the law enforcement officer's conduct was unreasonable or reckless or in some way contrary to law.

(5) On or before October 1, 2002, and annually thereafter until January 1, 2010, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and all other law enforcement agencies in this state shall provide to the commission, in such form as the commission prescribes, a summary report of the information recorded pursuant to subsection (2) of this section.

(6) On and after January 1, 2002, and until April 1, 2010, the commission may, within the limits of its existing appropriations, provide for a review of the prevalence and disposition of motor vehicle stops based on racial profiling and allegations reported pursuant to this section. The results of such review shall be reported annually to the Governor and the Legislature beginning on or before April 1, 2004, until April 1, 2010.

Source: Laws 2001, LB 593, § 4; Laws 2004, LB 1162, § 2; Laws 2006, LB 1113, § 19.

20-505 Forms authorized.

On or before January 1, 2002, the Nebraska Commission on Law Enforcement and Criminal Justice, the Superintendent of Law Enforcement and Public Safety, the Attorney General, and the State Court Administrator may adopt and promulgate: (1) A form, in printed or electronic format, to be used by a law enforcement officer when making a motor vehicle stop to record personal identifying information about the operator of such motor vehicle, the location of the stop, the reason for the stop, and any other information that is required to be recorded pursuant to subsection (2) of section 20-504 and (2) a form, in printed or electronic format, to be used to report an allegation of racial profiling by a law enforcement officer.

Source: Laws 2001, LB 593, § 5.

20-506 Racial Profiling Advisory Committee; created; members; duties.

(1) The Racial Profiling Advisory Committee is created.

(2) The committee shall consist of the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice, who also shall be the chairperson of the committee, and the following persons:

(a) A representative appointed by the Fraternal Order of Police;

(b) A representative appointed by the Nebraska County Sheriffs Association;

(c) A representative appointed by the Police Officers Association of Nebraska;

(d) A representative appointed by the American Civil Liberties Union of Nebraska;

(e) A representative appointed by the Nebraska State Patrol;

(f) A representative appointed by the AFL-CIO; and

(g) A representative appointed by the Police Chiefs Association of Nebraska.

(3) The committee shall meet and organize within thirty days after the appointment of the members. The committee shall meet quarterly at a time and place to be fixed by the committee. Special meetings may be called by the chairperson or at the request of two or more members of the committee.

(4) The committee shall advise the executive director of the commission in the conduct of his or her duties pursuant to subsection (6) of section 20-504.

Source: Laws 2004, LB 1162, § 5.

CHAPTER 21
CORPORATIONS AND OTHER COMPANIES

Article.

Article.

Cross References

Constitutional provisions:
Bonus, Legislature cannot grant, see Article III, section 18, Constitution of Nebraska.
Credit of state, never given or loaned to, see Article XIII, section 3, Constitution of Nebraska.
Donation of state lands prohibited, see Article III, section 21, Constitution of Nebraska.
Franchises, granting to, prohibited, see Article III, section 18, Constitution of Nebraska.
Organization and control, by general law, see Article XII, section 1, Constitution of Nebraska.
Property and franchises, subject to be taken for public use, see Article X, section 6, Constitution of Nebraska.
Railroads, aid to, prohibited, see Article III, section 21, Constitution of Nebraska.
Subscription to stock by governmental subdivision prohibited, see Article XI, section 1, Constitution of Nebraska.
Actions against, venue, see section 25-403.02.
Aliens as board members, see section 76-406 et seq.
Banks, see Chapter 8.
Building and loan associations, see Chapter 8, article 3.
Drainage district corporations, filing articles, see section 31-305.
Electric Cooperative Corporation Act, see section 70-701.
Indictment and information against corporations, see section 29-1608.
Insurance, see Chapter 44.
Irrigation companies, see Chapter 46.
Public power and irrigation districts, see Chapter 70.
Securities Act of Nebraska, see section 8-1123.
Taxation, see Chapter 77.
Telegraph companies, file articles and statements, see section 86-602.
Trust companies, see Chapter 8, article 2.

ARTICLE 1
ORGANIZATION AND POWERS

Section
21-101. Repealed. Laws 1963, c. 98, § 135.
21-102. Repealed. Laws 1963, c. 98, § 135.
21-103. Repealed. Laws 1963, c. 98, § 135.
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21-1,148 Repealed. Laws 1963, c. 98, § 135.

21-1,149 Repealed. Laws 1963, c. 98, § 135.

21-1,150 Repealed. Laws 1963, c. 98, § 135.

21-1,151 Repealed. Laws 1963, c. 98, § 135.

21-1,152 Repealed. Laws 1963, c. 98, § 135.

21-1,153 Repealed. Laws 1963, c. 98, § 135.

21-1,154 Repealed. Laws 1963, c. 98, § 135.

21-1,155 Repealed. Laws 1963, c. 98, § 135.

21-1,156 Repealed. Laws 1963, c. 98, § 135.

21-1,157 Repealed. Laws 1963, c. 98, § 135.

21-1,158 Repealed. Laws 1963, c. 98, § 135.

21-1,159 Repealed. Laws 1963, c. 98, § 135.

21-1,160 Repealed. Laws 1963, c. 98, § 135.

21-1,161 Repealed. Laws 1963, c. 98, § 135.

21-1,162 Repealed. Laws 1963, c. 98, § 135.

21-1,163 Repealed. Laws 1963, c. 98, § 135.

21-1,164 Repealed. Laws 1963, c. 98, § 135.

21-1,165 Repealed. Laws 1963, c. 98, § 135.

ARTICLE 2
THE UNIFORM STOCK TRANSFER ACT

Section
21-201. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-202. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-203. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-204. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-205. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-206. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-207. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-208. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-209. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-210. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-211. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-212. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-213. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-214. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-215. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-216. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-217. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-218. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-219. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-220. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-221. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-222. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-223. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-224. Repealed. Laws 1963, c. 544, art. 10, § 1.

21-201 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-202 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-203 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-204 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-205 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-206 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-207 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-208 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-209 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-210 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-211 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-212 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-213 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-214 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-215 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-216 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-217 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-218 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-219 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-220 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-221 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-222 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-223 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-224 Repealed. Laws 1963, c. 544, art. 10, § 1.

ARTICLE 3
OCCUPATION TAX

Section

21-301 Domestic corporations; biennial report and fee; procedure.

(1) Each corporation organized under the laws of this state, for profit, shall make a report in writing to the Secretary of State, as of January 1, of each even-numbered year, in such form as the Secretary of State may prescribe. The report shall be signed by one of the following: The president, a vice president, a secretary, or a treasurer of the corporation. The report and biennial fee shall be forwarded to the Secretary of State. The report and fee shall be due on March 1 of each even-numbered year and shall become delinquent if not filed and paid by April 15 of each even-numbered year. If the Secretary of State finds that such report and biennial fee conform to the requirements of the law, the Secretary of State shall file the report. If the Secretary of State finds that the report or fee does not conform, the Secretary of State shall return the report and fee to the corporation for any necessary corrections. A correction or amendment to the biennial report may be filed at any time.

(2) In each even-numbered year, the Secretary of State shall cause a notice to be sent by United States mail to each corporation for which a report and fee as described in this section has not been received as of March 1. The notice shall state that the report has not been received, that the report and fee are due on March 1, and that the corporation will be dissolved if the report and proper fee are not received by April 15.

Source: Laws 1913, c. 240, § 1, p. 745; R.S.1913, § 761; C.S.1922, § 679; C.S.1929, § 24-1701; R.S.1943, § 21-301; Laws 1967, c. 101, § 1, p. 309; Laws 1969, c. 124, § 1, p. 567; Laws 1982, LB 928, § 6; Laws 2002, LB 989, § 1; Laws 2003, LB 524, § 1; Laws 2006, LB 647, § 1.

Intention of Legislature was to place domestic and foreign corporation upon an equality as regards tax. State ex rel. J. I. Case Threshing Machine Co. v. Marsh, 117 Neb. 832, 223 N.W. 126 (1929).

21-302 Domestic corporations; biennial report; contents.

The biennial report required under section 21-301 from a domestic corporation subject to the Business Corporation Act shall show:

(1) The exact corporate name of the corporation;

(2) The street address of the corporation's registered office and the name of its registered agent at that office in this state;

(3) The street address of the corporation's principal office;

(4) The names and street addresses of the corporation's directors and principal officers, which shall include the president, secretary, and treasurer;

(5) A brief description of the nature of the corporation's business;

(6) The amount of paid-up capital stock; and

(7) The change or changes, if any, in the above particulars made since the last biennial report.

Source: Laws 1913, c. 240, § 2, p. 745; R.S.1913, § 762; C.S.1922, § 680; C.S.1929, § 24-1702; R.S.1943, § 21-302; Laws 1967, c. 101, § 2, p. 309; Laws 1995, LB 109, § 195; Laws 2003, LB 524, § 2.

Cross References

Business Corporation Act, see section 21-2001.

21-303 Domestic corporations; occupation tax; fees; amount; stock without par value, determination of amount.

(1) At the time of filing the report under section 21-301 each even-numbered year, it shall be the duty of every corporation for profit, and registered in the office of the Secretary of State on January 1, whether incorporated under the laws of this state or incorporated under the laws of any other state when such corporations have domesticated in this state, to pay to the Secretary of State a biennial fee for each even-numbered calendar year beginning January 1, which fee shall be due and assessable on such date and delinquent if not paid on or before April 15 of each even-numbered year.

(2) The biennial fee shall be as follows: When the paid-up capital stock of a corporation does not exceed ten thousand dollars, a fee of twenty-six dollars; when such paid-up capital stock exceeds ten thousand dollars but does not exceed twenty thousand dollars, a fee of forty dollars; when such paid-up capital stock exceeds twenty thousand dollars but does not exceed thirty thousand dollars, a fee of sixty dollars; when such paid-up capital stock exceeds thirty thousand dollars but does not exceed forty thousand dollars, a fee of eighty dollars; when such paid-up capital stock exceeds forty thousand dollars but does not exceed fifty thousand dollars, a fee of one hundred dollars; when such paid-up capital stock exceeds fifty thousand dollars but does not exceed sixty thousand dollars, a fee of one hundred twenty dollars; when such paid-up capital stock exceeds sixty thousand dollars but does not exceed seventy thousand dollars, a fee of one hundred forty dollars; when such paid-up capital stock exceeds seventy thousand dollars but does not exceed eighty thousand dollars, a fee of one hundred sixty dollars; when such paid-up capital stock exceeds eighty thousand dollars but does not exceed ninety thousand dollars, a fee of one hundred eighty dollars; when such paid-up capital stock exceeds ninety thousand dollars but does not exceed one hundred thousand dollars, a fee of two hundred dollars; when such paid-up capital stock exceeds one hundred thousand dollars but does not exceed one hundred twenty-five thousand dollars, a fee of two hundred forty dollars; when such paid-up capital stock exceeds one hundred twenty-five thousand dollars but does not exceed one hundred fifty thousand dollars, a fee of two hundred eighty dollars; when such paid-up capital stock exceeds one hundred fifty thousand dollars but does not exceed one hundred seventy-five thousand dollars, a fee of three hundred twenty dollars; when such paid-up capital stock exceeds one hundred seventy-five thousand dollars but does not exceed two hundred thousand dollars, a fee of three hundred sixty dollars; when such paid-up capital stock exceeds two hundred thousand dollars but does not exceed two hundred twenty-five thousand dollars, a fee of four hundred dollars; when such paid-up capital stock exceeds two hundred twenty-five thousand dollars but does not exceed two hundred fifty thousand dollars, a fee of four hundred forty dollars; when such

paid-up capital stock exceeds two hundred fifty thousand dollars but does not exceed two hundred seventy-five thousand dollars, a fee of four hundred eighty dollars; when such paid-up capital stock exceeds two hundred seventy-five thousand dollars but does not exceed three hundred thousand dollars, a fee of five hundred twenty dollars; when such paid-up capital stock exceeds three hundred thousand dollars but does not exceed three hundred twenty-five thousand dollars, a fee of five hundred sixty dollars; when such paid-up capital stock exceeds three hundred twenty-five thousand dollars but does not exceed three hundred fifty thousand dollars, a fee of six hundred dollars; when such paid-up capital stock exceeds three hundred fifty thousand dollars but does not exceed four hundred thousand dollars, a fee of six hundred sixty-six dollars; when such paid-up capital stock exceeds four hundred thousand dollars but does not exceed four hundred fifty thousand dollars, a fee of seven hundred thirty dollars; when such paid-up capital stock exceeds four hundred fifty thousand dollars but does not exceed five hundred thousand dollars, a fee of eight hundred dollars; when such paid-up capital stock exceeds five hundred thousand dollars but does not exceed six hundred thousand dollars, a fee of nine hundred ten dollars; when such paid-up capital stock exceeds six hundred thousand dollars but does not exceed seven hundred thousand dollars, a fee of one thousand ten dollars; when such paid-up capital stock exceeds seven hundred thousand dollars but does not exceed eight hundred thousand dollars, a fee of one thousand one hundred twenty dollars; when such paid-up capital stock exceeds eight hundred thousand dollars but does not exceed nine hundred thousand dollars, a fee of one thousand two hundred thirty dollars; when such paid-up capital stock exceeds nine hundred thousand dollars but does not exceed one million dollars, a fee of one thousand three hundred thirty dollars; when such paid-up capital stock exceeds one million dollars but does not exceed ten million dollars, a fee of one thousand three hundred thirty dollars, and eight hundred dollars additional for each million or fraction thereof over and above one million dollars; when such paid-up capital stock exceeds ten million dollars but does not exceed fifteen million dollars, a fee of twelve thousand dollars; when such paid-up capital stock exceeds fifteen million dollars but does not exceed twenty million dollars, a fee of fourteen thousand six hundred sixty dollars; when such paid-up capital stock exceeds twenty million dollars but does not exceed twenty-five million dollars, a fee of seventeen thousand three hundred thirty dollars; when such paid-up capital stock exceeds twenty-five million dollars but does not exceed fifty million dollars, a fee of twenty thousand six hundred sixty dollars; when such paid-up capital stock exceeds fifty million dollars but does not exceed one hundred million dollars, a fee of twenty-one thousand three hundred thirty dollars; and when such paid-up capital stock exceeds one hundred million dollars, a fee of twenty-three thousand nine hundred ninety dollars. The minimum biennial fee for filing such report shall be twenty-six dollars. For purposes of determining the fee, the stock of corporations incorporated under the laws of any other state, which corporations have domesticated in this state and which stock is without par value, shall be deemed to have a par value of an amount equal to the amount paid in as capital for such shares at the time of the issuance thereof.

Source: Laws 1913, c. 240, § 3, p. 745; R.S.1913, § 763; C.S.1922, § 681; C.S.1929, § 24-1703; R.S.1943, § 21-303; Laws 1947, c. 55, § 1, p. 185; Laws 1955, c. 63, § 2, p. 200; Laws 1965, c. 87, § 1, p.

350; Laws 1967, c. 101, § 3, p. 310; Laws 1969, c. 124, § 2, p. 568; Laws 1982, LB 928, § 7; Laws 1992, LB 719A, § 90; Laws 2003, LB 524, § 3.

Distinction between domestic and domesticated foreign corporation is recognized. Omaha Nat. Bank v. Jensen, 157 Neb. 22, 58 N.W.2d 582 (1953).

Under former law, all occupation taxes assessed against domestic corporation for profit were a lien upon all property of corporation. Licking v. Hays Lumber Co., 146 Neb. 240, 19 N.W.2d 148 (1945).

Tax hereunder is in nature of franchise tax, rather than tax upon property, capital stock or business, and it is not a tax on interstate commerce. State of Nebraska ex rel. Beatrice Creamery Co. v. Marsh, 119 Neb. 197, 227 N.W. 926 (1929), appeal dismissed 282 U.S. 799 (1930).

Paid-up capital of Nebraska corporation means amount of authorized capital stock employed in business. State ex rel. J. I. Case Threshing Machine Co. v. Marsh, 117 Neb. 832, 223 N.W. 126 (1929).

21-304 Foreign corporations; biennial report and fee; procedure.

(1) Each foreign corporation for profit, doing business in this state, owning or using a part or all of its capital or plant in this state, and subject to compliance with all other provisions of law shall, in addition to all other statements required by law, make a biennial report in writing, to the Secretary of State, as of January 1 of each even-numbered year, in such form as the Secretary of State may prescribe. The report shall be signed by one of the following: The president, a vice president, a secretary, or a treasurer of the corporation. The report and biennial fee shall be forwarded to the Secretary of State. The report and fee shall be due on March 1 of each even-numbered year and shall become delinquent if not filed and paid by April 15 of each even-numbered year. If the Secretary of State finds that such report and biennial fee conform to the requirements of the law, the Secretary of State shall file the report. If the Secretary of State finds that the report and fee do not conform, the Secretary of State shall return the report and fee to the corporation for any necessary corrections. A correction or amendment to the biennial report may be filed at any time.

(2) In each even-numbered year, the Secretary of State shall cause a notice to be sent by United States mail to each corporation for which a report and fee as described in this section has not been received as of March 1. The notice shall state that the report has not been received, that the report and fee are due on March 1, and that the corporation will be dissolved if the report and proper fee are not received by April 15 of each even-numbered year.

Source: Laws 1913, c. 240, § 4, p. 748; R.S.1913, § 764; C.S.1922, § 682; C.S.1929, § 24-1704; R.S.1943, § 21-304; Laws 1955, c. 63, § 3, p. 203; Laws 1967, c. 101, § 4, p. 313; Laws 1969, c. 124, § 3, p. 571; Laws 1982, LB 928, § 8; Laws 2002, LB 989, § 2; Laws 2003, LB 524, § 4; Laws 2006, LB 647, § 2.

This section requires statement of how much capital is employed within and how much without the state. State ex rel. J. I. Case Threshing Machine Co. v. Marsh, 117 Neb. 832, 223 N.W. 126 (1929).

State only can complain of failure to conform to statutory requirements. Northwest Ready Roofing Co. v. Antes, 117 Neb. 121, 219 N.W. 848 (1928).

21-305 Foreign corporations; biennial report; contents.

The biennial report required under section 21-304 from a foreign corporation subject to the Business Corporation Act shall show:

(1) The exact corporate name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) The street address of the foreign corporation's registered office and the name of its registered agent at that office in this state;

(3) The street address of the foreign corporation's principal office;

(4) The names and street addresses of the foreign corporation's directors and principal officers which shall include the president, secretary, and treasurer;

(5) A brief description of the nature of the foreign corporation's business;

(6) The value of the property owned and used by the foreign corporation in Nebraska and where such property is situated; and

(7) The change or changes, if any, in the above particulars made since the last annual report.

Source: Laws 1913, c. 240, § 5, p. 749; R.S.1913, § 765; C.S.1922, § 683; C.S.1929, § 24-1705; R.S.1943, § 21-305; Laws 1967, c. 101, § 5, p. 313; Laws 1995, LB 109, § 196; Laws 2003, LB 524, § 5.

Cross References

Business Corporation Act, see section 21-2001.

Domestic and foreign corporations are treated differently for purpose of tax. State of Nebraska ex rel. Beatrice Creamery Co. v. Marsh, 119 Neb. 197, 227 N.W. 926 (1929), appeal dismissed 282 U.S. 799 (1930).

21-306 Foreign corporations; occupation tax; investigation by Secretary of State for collection purposes.

Upon the filing of the biennial report required under section 21-304 with the Secretary of State, it shall be the duty of every foreign corporation for profit, doing business in this state, to pay to the Secretary of State a biennial fee which shall be for each even-numbered calendar year beginning January 1 and become due and assessable on March 1 of that year and become delinquent if not paid by April 15 of each even-numbered year. The fee shall be measured by the property employed by the foreign corporation in the conduct of its business in the State of Nebraska. For such purpose the property shall consist of the sum total of the actual value of all real estate and personal property employed in Nebraska by such foreign corporation in the transaction of its business. The biennial fee to be paid by such foreign corporation shall be based upon the sum so determined, and shall be considered the capital stock of such foreign corporation in this state for the purpose of the biennial fee. The schedule of payment shall be double the fees set forth in section 21-303, or any amendments thereto, except that the fee shall not exceed thirty thousand dollars, and the Secretary of State, or any person deputized by the Secretary of State, shall have authority to investigate and obtain information from such corporation or any state, county, or city official. Such officers are authorized by this section to furnish such information to the Secretary of State, or anyone deputized by the Secretary of State, in order to determine all facts and give effect to the collection of the biennial fee.

Source: Laws 1913, c. 240, § 6, p. 749; R.S.1913, § 766; C.S.1922, § 684; C.S.1929, § 24-1706; Laws 1933, c. 32, § 1, p. 212; Laws 1935, c. 47, § 1, p. 172; C.S.Supp.,1941, § 24-1706; R.S.1943, § 21-306; Laws 1955, c. 63, § 4, p. 203; Laws 1965, c. 87, § 2, p. 353; Laws 1967, c. 101, § 6, p. 313; Laws 1969, c. 124, § 4, p. 571; Laws 1982, LB 928, § 9; Laws 2002, LB 989, § 3; Laws 2003, LB 524, § 6.

Occupation tax of foreign corporation is computed upon basis of paid-up capital stock employed in this state. State ex rel. J. I. Case Threshing Machine Co. v. Marsh, 117 Neb. 832, 223 N.W. 126 (1929).

21-307 Repealed. Laws 1969, c. 124, § 11.

21-308 Repealed. Laws 1969, c. 124, § 11.

21-309 Repealed. Laws 1969, c. 124, § 11.

21-310 Repealed. Laws 1967, c. 101, § 14.

21-311 Fees; disposition; monthly report of Secretary of State.

The Secretary of State shall make a report monthly to the Tax Commissioner of the biennial fees collected under sections 21-301 to 21-325 and shall pay the same into the state treasury to the credit of the General Fund. The report shall include the amount of any refunds paid out under section 21-328.

Source: Laws 1913, c. 240, § 11, p. 750; R.S.1913, § 771; C.S.1922, § 689; C.S.1929, § 24-1711; R.S.1943, § 21-311; Laws 1984, LB 799, § 2; Laws 2003, LB 524, § 7.

21-312 Fees; lien; notice; lien subject to prior liens.

The fees required to be paid by sections 21-301 to 21-325 shall be the first and best lien on all property of the corporation whether such real or personal property is employed by the corporation in the prosecution of its business or is in the hands of an assignee, trustee, or receiver for the benefit of the creditors and stockholders thereof. The Secretary of State may file notice of such lien in the office of the county clerk of the county wherein the personal property sought to be charged with such lien is situated and with the county clerk or register of deeds of the county wherein the real estate sought to be charged with such lien is situated. The lien provided for in this section shall be invalid as to any mortgagee or pledgee whose lien is filed, as against any judgment lien which attached, or as against any purchaser whose rights accrued, prior to the filing of such notice.

Source: Laws 1913, c. 240, § 12, p. 750; R.S.1913, § 772; C.S.1922, § 690; C.S.1929, § 24-1712; Laws 1943, c. 54, § 1, p. 218; R.S.1943, § 21-312; Laws 1969, c. 124, § 5, p. 572; Laws 1988, LB 800, § 1.

Under prior statute, occupation taxes were a lien although not filed in office of register of deeds or county clerk. Licking v. Hays Lumber Co., 146 Neb. 240, 19 N.W.2d 148 (1945).

21-313 Failure to file report or pay fee; automatically dissolved, when.

If a corporation required to file the report and pay the fee prescribed in sections 21-301 to 21-325 fails or neglects to make such report or pay such fee by April 15 of each even-numbered year, such corporation shall be automatically dissolved on April 16 of such year.

Source: Laws 1913, c. 240, § 13, p. 750; R.S.1913, § 773; C.S.1922, § 691; C.S.1929, § 24-1713; R.S.1943, § 21-313; Laws 1945, c. 39, § 1, p. 195; Laws 1955, c. 63, § 7, p. 204; Laws 1967, c. 101, § 9, p. 315; Laws 1969, c. 124, § 6, p. 572; Laws 1982, LB 928, § 10; Laws 2002, LB 989, § 4; Laws 2003, LB 524, § 8.

Foreign corporation tax is computed upon the amount of its paid-up capital stock employed in Nebraska. State ex rel. J. I. Case Threshing Machine Co. v. Marsh, 117 Neb. 832, 223 N.W. 126 (1929).

After action has been brought in name of dissolved corporation, amendment may be allowed substituting as plaintiffs the managing directors as trustees. Weekes Grain & Live Stock Co. v. Ware & Leland, 99 Neb. 126, 155 N.W. 233 (1915).

After charter has been forfeited for nonpayment of occupation tax, corporation cannot sue in corporate name. Weekes Grain & Live Stock Co. v. Ware & Leland, 99 Neb. 126, 155 N.W. 233

(1915); Havens & Co. v. Colonial Apartment House Co., 97 Neb. 639, 150 N.W. 1011 (1915).

21-314 Fees; how collected; credited to General Fund.

Such biennial fee or fees to be paid as provided in sections 21-301 to 21-325 may be recovered by an action in the name of the state and on collection shall be paid into the treasury to the credit of the General Fund.

Source: Laws 1913, c. 240, § 14, p. 750; R.S.1913, § 774; C.S.1922, § 692; C.S.1929, § 24-1714; R.S.1943, § 21-314; Laws 1969, c. 124, § 7, p. 573; Laws 1988, LB 800, § 2; Laws 2003, LB 524, § 9.

21-315 Fees; collection; venue of action.

The Attorney General, on request of the Secretary of State, shall institute such action in the district court of Lancaster County, or any other county in the state in which such corporation has an office or place of business.

Source: Laws 1913, c. 240, § 15, p. 750; R.S.1913, § 775; C.S.1922, § 693; C.S.1929, § 24-1715.

21-316 Repealed. Laws 1971, LB 485, § 2.

21-317 Reports and fees; violations; annulment of charter.

If a corporation, organized under the laws of Nebraska, for profit or not for profit, required to file the report and pay the fee prescribed in sections 21-301 to 21-325, fails or neglects to make such report or pay such fee for thirty days after the expiration of the time limited by said sections, and such default is willful and intentional, the Attorney General, on the request of the Secretary of State, shall bring an action in the district court of Lancaster County, or any county in this state in which such corporation is located, to forfeit and annul the charter of such corporation. If the court is satisfied that such default is willful and intentional, it may revoke and annul such charter.

Source: Laws 1913, c. 240, § 17, p. 751; R.S.1913, § 777; C.S.1922, § 695; C.S.1929, § 24-1717; R.S.1943, § 21-317; Laws 1967, c. 101, § 10, p. 315.

Where corporation paid fee and penalty as demanded, judgment of ouster will not be sustained, though Secretary of State, through oversight, demanded less than required by law. State ex rel. Hartigan v. Sperry & Hutchinson Co., 94 Neb. 785, 144 N.W. 795 (1913).

21-318 List of corporations; duty of Secretary of State.

It shall be the duty of the Secretary of State to prepare and keep a correct list of all corporations subject to sections 21-301 to 21-325 and engaged in business within the State of Nebraska. For the purpose of obtaining the necessary information, the Secretary of State, or other person deputized by him or her, shall have access to the records of the offices of the county clerks of the state.

Source: Laws 1913, c. 240, § 18, p. 751; R.S.1913, § 778; C.S.1922, § 696; C.S.1929, § 24-1718; R.S.1943, § 21-318; Laws 1988, LB 800, § 3.

21-319 Investigation by Secretary of State for collection purposes; duty of county clerk.

Any county clerk shall, upon request of the Secretary of State, furnish him or her with such information as is shown by the records of his or her office concerning corporations located within his or her county and subject to sections 21-301 to 21-325. The Secretary of State, or any person deputized by him or her for the purpose of determining the amount of fees due from such corporation, shall have authority to investigate and determine the facts showing the proportion of the paid-up capital stock of the company represented by its property and business in Nebraska.

Source: Laws 1913, c. 240, § 19, p. 751; R.S.1913, § 779; C.S.1922, § 697; C.S.1929, § 24-1719; R.S.1943, § 21-319; Laws 1988, LB 800, § 4.

21-320 Repealed. Laws 1969, c. 124, § 11.

21-321 Reports and fees; exemptions.

All banking, insurance, and building and loan association corporations paying fees and making reports to the Auditor of Public Accounts or the Director of Banking and Finance and all other corporations paying an occupation tax to the state under any other statutory provisions than those of sections 21-301 to 21-325 shall be exempt from the provisions of such sections.

Source: Laws 1913, c. 240, § 21, p. 752; R.S.1913, § 781; C.S.1922, § 699; C.S.1929, § 24-1721; R.S.1943, § 21-321; Laws 1969, c. 124, § 8, p. 573; Laws 1988, LB 800, § 5; Laws 2003, LB 524, § 10.

21-322 Dissolution, revocation of charter; certificate required; filing; fees.

In case of dissolution or revocation of charter by action of a competent court, or the winding up of a corporation, either foreign or domestic, by proceedings in assignment or bankruptcy, a certificate shall be signed by the clerk of the court in which such proceedings were had and filed in the office of the Secretary of State. The fees for making and filing such certificate shall be taxed as costs in the proceedings and paid out of the funds of the corporation, and shall have the same priority as other costs.

Source: Laws 1913, c. 240, § 22, p. 752; R.S.1913, § 782; C.S.1922, § 700; C.S.1929, § 24-1722; Laws 1943, c. 54, § 2, p. 218; R.S.1943, § 21-322; Laws 1967, c. 101, § 11, p. 315.

21-323 Domestic corporations; reports and taxes; notice; failure to pay; automatic dissolution; lien; priority.

(1) Prior to January 1 of each even-numbered year, the Secretary of State shall cause to be mailed by first-class mail to the last-named and appointed registered agent at the last-named street address of the registered office of each domestic corporation subject to sections 21-301 to 21-325 a notice stating that on or before March 1 of each even-numbered year occupation taxes are due to be paid and a properly executed and signed report is due to be filed. If occupation taxes are not paid and the report is not filed by April 15 of each even-numbered year, (a) such taxes and report shall become delinquent, (b) the delinquent corporation shall be automatically dissolved on April 16 of such year for nonpayment of occupation taxes and failure to file the report, and (c) the

delinquent occupation tax shall be a lien upon the assets of the corporation subsequent only to state, county, and municipal taxes.

(2) Upon the failure of any domestic corporation to pay its occupation tax and file the report within the time limited by sections 21-301 to 21-325, the Secretary of State shall on April 16 of such year automatically dissolve the corporation for nonpayment of taxes and make such entry and showing upon the records of his or her office.

(3)(a) The Secretary of State shall automatically dissolve a corporation subject to the Business Corporation Act by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under section 21-2034.

(b) A corporation automatically dissolved continues its corporate existence but may not carry on any business, except that business necessary to wind up and liquidate its business and affairs under section 21-20,155 and notify claimants under sections 21-20,156 and 21-20,157.

(c) The automatic dissolution of a corporation shall not terminate the authority of its registered agent.

(4) All delinquent occupation taxes of the corporation shall be a lien upon the assets of the corporation, subsequent only to state, county, and municipal taxes.

(5) No domestic corporation shall be voluntarily dissolved until all occupation taxes and fees due to or assessable by the state have been paid and the report filed by such corporation.

Source: Laws 1913, c. 240, § 22, p. 752; R.S.1913, § 782; C.S.1922, § 700; C.S.1929, § 24-1722; Laws 1943, c. 54, § 2, p. 218; R.S.1943, § 21-323; Laws 1957, c. 242, § 10, p. 823; Laws 1967, c. 101, § 12, p. 316; Laws 1969, c. 124, § 9, p. 573; Laws 1971, LB 485, § 1; Laws 1982, LB 928, § 11; Laws 1995, LB 109, § 197; Laws 2002, LB 989, § 5; Laws 2003, LB 524, § 11.

Cross References

Business Corporation Act, see section 21-2001.

Under former law, lien of occupation taxes was not cut off by foreclosure of tax sale certificate where state was not made party defendant to suit and perfected lien. Licking v. Hays Lumber Co., 146 Neb. 240, 19 N.W.2d 148 (1945).

21-323.01 Domestic corporation automatically dissolved; reinstatement; application; procedure; payment required.

(1) A corporation automatically dissolved under section 21-323 may apply to the Secretary of State for reinstatement. The application shall:

(a) Recite the name of the corporation and the effective date of its automatic dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(c) State that the corporation's name satisfies the requirements of section 21-2028; and

(d) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for reinstatement.

(2) If the Secretary of State determines (a) that the application contains the information required by subsection (1) of this section and that the information is correct and (b) that the corporation has complied with subsection (4) of this section, he or she shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-2034.

(3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the automatic dissolution and the corporation shall resume carrying on its business as if the automatic dissolution had never occurred.

(4) A corporation applying for reinstatement under this section shall:

(a)(i) Pay to the Secretary of State a sum equal to all occupation taxes delinquent at the time the corporation was automatically dissolved, plus a sum equal to all occupation taxes which would otherwise have been due for the years the corporation was automatically dissolved; and (ii) forward to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(b) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from time to time be adjusted, times the amount of occupation taxes required to be paid by it for each year that such corporation was automatically dissolved.

Source: Laws 1995, LB 109, § 198; Laws 1996, LB 1036, § 1; Laws 2003, LB 524, § 12.

21-323.02 Domestic corporation automatically dissolved; denial of reinstatement; appeal.

(1) If the Secretary of State denies a corporation's application for reinstatement following automatic dissolution under section 21-323, he or she shall serve the corporation under section 21-2034 with a written notice that explains the reason or reasons for denial.

(2) The corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected. The corporation shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 1995, LB 109, § 199.

21-324 Repealed. Laws 1967, c. 101, § 14.

21-325 Foreign corporations; reports and taxes; notice; failure to pay; automatic dissolution; lien; priority.

(1) Prior to January 1 of each even-numbered year, the Secretary of State shall cause to be mailed by first-class mail to the last-known address of each foreign corporation subject to sections 21-301 to 21-325 a notice stating that on

or before March 1 of each even-numbered year occupation taxes are due to be paid and a properly executed and signed report is due to be filed. If such occupation taxes are not paid and such report is not filed by April 15 of each even-numbered year, (a) such taxes and report shall become delinquent, (b) the delinquent corporation shall be automatically dissolved on April 16 of such year for nonpayment of occupation taxes and failure to file the report, and (c) the delinquent occupation tax shall be a lien upon the assets of the corporation subject only to state, county, and municipal taxes.

(2) Upon the failure of any foreign corporation to pay its occupation tax and file the report within the time limited by sections 21-301 to 21-325, the Secretary of State shall on April 16 of such year automatically dissolve the corporation for nonpayment of taxes and shall bar the corporation from doing business in the State of Nebraska under the corporation laws of the state and make such entry and showing upon the records of his or her office.

(3)(a) The Secretary of State shall automatically dissolve a foreign corporation subject to the Business Corporation Act by signing a certificate of revocation of authority to transact business in this state that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under section 21-20,177.

(b) The authority of a foreign corporation to transact business in this state shall cease on the date shown on the certificate revoking its certificate of authority.

(c) Revocation of a foreign corporation's certificate of authority shall not terminate the authority of the registered agent of the corporation.

(4) All delinquent corporation taxes of the corporation shall be a lien upon the assets of the corporation within the state, subsequent only to state, county, and municipal taxes. Nothing in sections 21-322 to 21-325 shall be construed to allow a foreign corporation to do business in Nebraska without complying with the laws of the State of Nebraska.

(5) No foreign corporation shall be voluntarily withdrawn until all occupation taxes due to or assessable by the state have been paid and the report filed by such corporation.

Source: Laws 1913, c. 240, § 23, p. 752; R.S.1913, § 783; Laws 1921, c. 173, § 2, p. 668; C.S.1922, § 701; C.S.1929, § 24-1723; R.S.1943, § 21-325; Laws 1957, c. 242, § 11, p. 824; Laws 1967, c. 101, § 13, p. 316; Laws 1969, c. 124, § 10, p. 574; Laws 1982, LB 928, § 12; Laws 1995, LB 109, § 200; Laws 2002, LB 989, § 6; Laws 2003, LB 524, § 13.

Cross References

Business Corporation Act, see section 21-2001.

21-325.01 Foreign corporation automatically dissolved; reinstatement; procedure.

(1) A foreign corporation, the certificate of authority of which has been revoked under section 21-325, may apply to the Secretary of State for reinstatement. The application shall:

(a) Recite the name of the foreign corporation and the effective date of the revocation;

(b) State that the ground or grounds for revocation either did not exist or have been eliminated;

(c) State that the foreign corporation's name satisfies the requirements of section 21-20,173; and

(d) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for reinstatement.

(2) If the Secretary of State determines (a) that the application contains the information required by subsection (1) of this section and that the information is correct and (b) that the foreign corporation has complied with subsection (4) of this section, he or she shall cancel the certificate of revocation, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-20,177.

(3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the revocation and the foreign corporation shall resume carrying on its business as if the revocation had never occurred.

(4) A foreign corporation applying for reinstatement under this section shall:

(a)(i) Pay to the Secretary of State a sum equal to all occupation taxes delinquent as of the effective date of the revocation, plus a sum equal to all occupation taxes which would otherwise have been due for the years the foreign corporation's certificate of authority was revoked; and (ii) forward to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(b) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from time to time be adjusted, times the amount of occupation taxes required to be paid by it for each year that such foreign corporation's certificate of authority was revoked.

Source: Laws 1995, LB 109, § 201; Laws 1996, LB 1036, § 2; Laws 2003, LB 524, § 14.

21-325.02 Foreign corporation automatically dissolved; reinstatement denied; appeal.

(1) If the Secretary of State denies a foreign corporation's application for reinstatement following revocation of its certificate of authority under section 21-325, he or she shall serve the foreign corporation under section 21-20,177 with a written notice that explains the reason or reasons for denial.

(2) The foreign corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected under section 21-20,177. The foreign corporation shall appeal by petitioning the court to set aside the revocation and attaching to the petition copies of the Secretary of State's certificate of revocation, the foreign corporation's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 1996, LB 1036, § 3.

21-326 Repealed. Laws 1967, c. 101, § 14.

21-327 Repealed. Laws 1967, c. 101, § 14

21-328 Fees; refund; procedure; appeal.

Any corporation paying the fees imposed by section 21-303 or 21-306 may claim a refund if the payment of such fee was invalid for any reason. The corporation shall file a written claim and any evidence supporting the claim within two years after payment of such fee. The Secretary of State shall either approve or deny the claim within thirty days after such filing. Any approved claims shall be paid out of the General Fund. Appeal of a decision by the Secretary of State shall be in accordance with the Administrative Procedure Act.

Source: Laws 1984, LB 799, § 1; Laws 1988, LB 352, § 21.

Cross References

Administrative Procedure Act, see section 84-920.

21-329 Paid-up capital stock, defined.

For purposes of Chapter 21, article 3, the term paid-up capital stock shall mean, at any particular time, the sum of the par value of all shares of capital stock of the corporation issued and outstanding.

Source: Laws 1984, LB 800, § 1; Laws 1995, LB 109, § 202; Laws 1999, LB 35, § 1.

21-330 Corporations; excess payment; refund.

Any corporation which has paid tax in excess of the proper amount of the occupation tax imposed in sections 21-301 to 21-325 shall be entitled to a refund of such excess payment. Claims for refund shall be filed with the Secretary of State or may be submitted by the Secretary of State based on his or her own investigation. If approved or submitted by the Secretary of State, the claim shall be forwarded to the State Treasurer for payment from the General Fund. The Secretary of State shall not refund any excess tax payment if five years have passed from the date of the excess payment.

Source: Laws 1991, LB 829, § 25; Laws 1992, Fourth Spec. Sess., LB 1, § 1; Laws 1993, LB 345, § 1; Laws 1995, LB 182, § 21; Laws 2003, LB 524, § 15; Laws 2006, LB 647, § 3.

ARTICLE 4

BRIDGE COMPANIES

Section
21-401. Repealed. Laws 1961, c. 69, § 1.
21-402. Repealed. Laws 1961, c. 69, § 1.
21-403. Repealed. Laws 1961, c. 69, § 1.
21-404. Repealed. Laws 1961, c. 69, § 1.
21-405. Repealed. Laws 1961, c. 69, § 1.
21-406. Repealed. Laws 1961, c. 69, § 1.
21-407. Repealed. Laws 1961, c. 69, § 1.

21-401 Repealed. Laws 1961, c. 69, § 1.

21-402 Repealed. Laws 1961, c. 69, § 1.

21-403 Repealed. Laws 1961, c. 69, § 1.

21-404 Repealed. Laws 1961, c. 69, § 1.

21-405 Repealed. Laws 1961, c. 69, § 1.

21-406 Repealed. Laws 1961, c. 69, § 1.

21-407 Repealed. Laws 1961, c. 69, § 1.

21-408 Repealed. Laws 1961, c. 69, § 1.

ARTICLE 5
REAL ESTATE CORPORATIONS

21-501 Repealed. Laws 1961, c. 70, § 1.

21-502 Repealed. Laws 1961, c. 70, § 1.

21-503 Repealed. Laws 1961, c. 70, § 1.

21-504 Repealed. Laws 1961, c. 70, § 1.

ARTICLE 6
CHARITABLE AND FRATERNAL SOCIETIES

Cross References

Exemption from inheritance tax, see section 77-2007.04.
Exemption from taxation, property used for charity, see section 77-202.
Fraternal benefit societies, see sections 44-1072 to 44-10,109.
Nonprofit corporation, formation, see section 21-1927.

Section

21-601 Repealed. Laws 1961, c. 71, § 1.

21-602 Repealed. Laws 1961, c. 71, § 1.

21-603 Repealed. Laws 1961, c. 71, § 1.

21-604 Repealed. Laws 1961, c. 71, § 1.

21-605 Repealed. Laws 1961, c. 71, § 1.

21-606 Repealed. Laws 1961, c. 71, § 1.

21-607 Repealed. Laws 1961, c. 71, § 1.

21-608 Societies declared to be corporations; status of subordinate organizations.

All state, grand, supreme, national, secret, fraternal, benevolent, or charitable orders, lodges, organizations, societies, or other bodies issuing charters to and having subordinate or auxiliary orders, lodges, organizations, societies, or other bodies within this state which have been or may be regularly established and chartered, including the following: The Grand Lodge, Ancient Free and Accepted Masons; The Supreme Guardian Council of the International Order of Job's Daughters; The Grand Chapter of the Order of the Eastern Star, of the State of Nebraska; the Grand Lodge Independent Order of Odd Fellows, the Grand Encampment I.O.O.F.; the Rebekah State Assembly, I.O.O.F.; the Department Council Patriarch Militant, I.O.O.F.; The Farmers' Alliance; Knights of Labor; The Grand Lodge Knights of Pythias of Nebraska; Pythian Sisterhood; Nebraska State Grange; Good Templars; Grand Army of the Republic; Women's Relief Corps, Department of Nebraska; United Spanish War Veterans, Department of Nebraska; The Benevolent and Protective Order of Elks of the United States of America; Benevolent, Patriotic Order of Does of the United States of America; the Western Bohemian Fraternal Association, Z.C.B.J.; The Bohemian Ladies' Society, J.C.D.; The Bohemian Benevolent Society, C.S.P.S.; The Bohemian Roman Catholic Benevolent Society, C.R.K.J.P. of Nebraska; The Women's Christian Temperance Union; The Young Women's Christian Association of the United States of America; Nebraska District Young Women's Christian Association; The Brotherhood of St. Andrews; The Improved Order of Red Men's League, an adoptive degree of the Improved Order of Red Men; Degree of Pocahontas; The Great Council of Nebraska Order of Red Men; The Grand

Lodge Fraternal Order of Eagles; The Knights of Columbus; Order of the Alhambra; The Modern Woodmen of America; The Woodmen of the World; The Ancient Order of United Workmen; Grand Lodge, Sons of Herman of Nebraska; The American Legion; Disabled American Veterans; The Marine Corps League; Eastern Orthodox Church; Katolicky Delnik, K.D., Catholic Workmen; The Western Bohemian Catholic Union, Z.C.K.J.; Catholic Youth Organization; The American Legion Auxiliary; the following college societies: Acacia, Alpha Gamma Rho, Alpha Sigma Phi, Alpha Tau Omega, Alpha Theta Chi, Chi Phi, Beta Theta Pi, Delta Chi, Delta Sigma Phi, Delta Tau Delta, Delta Upsilon, Kappa Delta Phi, Kappa Sigma, Lambda Chi Alpha, Phi Delta Theta, Phi Kappa Psi, Pi Kappa Phi, Pi Phi Chi, Sigma Alpha Epsilon, Sigma Chi, Sigma Nu, Sigma Phi Epsilon, Phi Gamma Delta, Phi Alpha Delta, Phi Delta Phi, Phi Delta Chi, Delta Sigma Delta, Xi Psi Phi, Nu Sigma Nu, Phi Chi, Phi Rho Sigma, Achoth, Alpha Chi Omega, Alpha Delta Pi, Alpha Omicron Pi, Alpha Phi, Alpha Xi Delta, Chi Omega, Delta Delta Delta, Delta Gamma, Delta Zeta, Gamma Phi Beta, Kappa Alpha Theta, Kappa Delta, Kappa Kappa Gamma, Pi Beta Phi, Kappa Alpha Psi, Gamma Eta Gamma, Bushnell Guild, Farm House, Silver Lynx, Theta Chi, Phi Mu, and Delta Sigma Pi; the Newman Club; the Nebraska Press Association; Boy Scouts of America; Boy Scouts of America Local Councils; Camp Fire Girls of America; Camp Fire Girls of America Local Councils; Pathfinder Club International; Firemen's Relief Association of Nebraska; Rotary International; Sertoma International; Kiwanis International; Cosmopolitan International; Optimist International; Stuart Lodge of the Catholic Knights of America; Pulaski Club of America; Katolicky Sokol of America; Telocvicna Jednota Sokol organizations in Nebraska; International Association of Lions Clubs; the Veterans of Foreign Wars of the United States; Chambers of Commerce; Junior Chambers of Commerce; OEA Senior Citizen's, Inc.; the Nebraska Council of Home Extension Clubs; Nebraska State Chapter of the P.E.O. Sisterhood; American Province of the Order of Servants of Mary; and Great Plains, Inc., together with each and every subordinate or auxiliary lodge, encampment, tribe, company, council, post, corps, department, society, or other designated organization or body within this state, under its properly designated or chartered name as has been or may be established and chartered within or for Nebraska by its respective state, grand, supreme, national, or other governing body, and working under a charter or charters from its respective state, grand, supreme, or national lodge, organization, or other governing body, be and the same are hereby made and declared corporations within the state under the name and title designated in the respective charters or constitutions by which name they shall be capable of suing, being sued, pleading, and being impleaded in the several courts of this state, the same as natural persons.

Source: Laws 1869, § 1, p. 64; Laws 1885, c. 30, § 1, p. 203; Laws 1889, c. 39, § 1, p. 403; Laws 1891, c. 17, § 1, p. 218; Laws 1905, c. 41, § 1, p. 282; Laws 1907, c. 31, § 1, p. 160; Laws 1909, c. 26, § 1, p. 202; R.S.1913, § 610; Laws 1917, c. 11, § 1, p. 69; Laws 1919, c. 156, § 1, p. 351; Laws 1921, c. 147, § 1, p. 622; Laws 1921, c. 174, § 1, p. 670; C.S.1922, § 504; Laws 1923, c. 34, § 1, p. 144; Laws 1925, c. 148, § 1, p. 383; Laws 1929, c. 57, § 1, p. 222; C.S.1929, § 24-607; Laws 1935, c. 46, § 1, p. 168; Laws 1937, c. 52, § 1, p. 216; C.S.Supp.,1941, § 24-607; R.S.1943, § 21-608; Laws 1949, c. 30, § 1, p. 114; Laws 1953, c. 44, § 1, p. 161; Laws 1959, c. 73, § 1, p. 309; Laws 1961, c. 72, § 1, p. 277; Laws 1971,

LB 8, § 1; Laws 1975, LB 149, § 1; Laws 1979, LB 102, § 1; Laws 1980, LB 748, § 1; Laws 1983, LB 262, § 1; Laws 1986, LB 762, § 1; Laws 1990, LB 1102, § 1.

A labor union is not a corporation under this section. Hurley v. Brotherhood of Railroad Trainmen, 147 Neb. 781, 25 N.W.2d 29 (1946).

Legislature, by this section, provided for the incorporation of Grand Lodge, Free and Accepted Masons, and its subordinate bodies, without any precise definition of the terms benevolent and charitable. Ancient and Accepted Scottish Rite of Freemasonry v. Board of County Commissioners of Lancaster County, 122 Neb. 586, 241 N.W. 93 (1932), 81 A.L.R. 1166 (1932).

Where Nebraska Supreme Court held certain type of certificate issued by Nebraska fraternal beneficiary association to be ultra vires, refusal of Missouri courts to so hold violated full faith and credit clause of federal Constitution. Sovereign Camp W.O.W. v. Bolin, 305 U.S. 66 (1938), 119 A.L.R. 478 (1938).

This section constitutes as bodies corporate the organizations described therein, and filing of charter is merely a condition precedent to right to hold title to real estate in own name. Collins v. Russell, 114 F.2d 334 (8th Cir. 1940).

21-609 Societies declared to be corporations; power to acquire and hold property; charter, constitution; filing of copy required.

Each of said organizations, lodges or societies shall have power to receive bequests of real and personal property, to hold and convey both real and personal property, to lease property and to do all other things usually done by corporations for the purpose for which organized. In order to own, hold and convey real estate, each organization mentioned in section 21-608, shall file with the Secretary of State, for itself, a certified copy of the charter of the state organization, if there be one, or if there be no state organization then of the supreme or national organization, duly certified as a true copy thereof by the secretary or other like officer of such state organization, or supreme or national organization, as the case may be, under the official seal thereof; *Provided*, that if such state organization shall not exist under or by virtue of a charter from any grand, supreme or national governing body, but is working under and by virtue of its own constitution, then such organization shall file with the Secretary of State a correct copy of such constitution certified to by its secretary or other like officer, as a true copy of such constitution under the official seal of such state organization. Each of the subordinate organizations mentioned in section 21-608, and working under a charter from a state, supreme, or national organization shall, for itself, file with the clerk of the county in which such subordinate organization is located, a copy of the charter or constitution under which it is working, duly certified as a true copy thereof, by the secretary or other like officer thereof, under the official seal thereof, and such societies shall be thereafter entitled to all the privileges and rights incident to bodies corporate so long as they retain their respective organization and charters aforesaid.

Source: Laws 1869, § 2, p. 64; Laws 1885, c. 30, § 2, p. 204; Laws 1889, c. 39, § 1, p. 404; Laws 1891, c. 17, § 1, p. 220; Laws 1905, c. 42, § 1, p. 282; Laws 1907, c. 31, § 1, p. 161; Laws 1909, c. 26, § 1, p. 203; R.S.1913, § 610; Laws 1917, c. 11, § 1, p. 70; Laws 1919, c. 156, § 1, p. 352; Laws 1921, c. 147, § 1, p. 623; Laws 1921, c. 174, § 1, p. 671; C.S.1922, § 504; Laws 1923, c. 34, § 1, p. 145; Laws 1925, c. 148, § 1, p. 385; Laws 1929, c. 57, § 1, p. 224; C.S.1929, § 24-607; Laws 1935, c. 46, § 1, p. 170; Laws 1937, c. 52, § 1, p. 218; C.S.Supp.,1941, § 24-607.

Filing of copy of charter of subordinate fraternal society is merely a condition precedent to right to hold real estate in its own name. Bejot v. Ainsworth Lodge No. 130, I.O.O.F., 128 Neb. 631, 259 N.W. 745 (1935).

21-610 Societies declared to be corporations; power to act as administrator, executor, guardian, or trustee.

When any such organization shall have established in this state an institution for the care of children or persons who are incapacitated in any manner and

such institution shall have been incorporated under the laws of Nebraska, such corporation shall have power to act either by itself or jointly with any natural person or persons (1) as administrator of the estate of any deceased person whose domicile was within the county in which the corporation is located or whose domicile was outside the State of Nebraska, (2) as executor under a last will and testament or as guardian of the property of any infant, person with mental retardation, person with a mental disorder, or person under other disability, or (3) as trustee for any person or of the estate of any deceased person under the appointment of any court of record having jurisdiction of the estate of such person.

Source: Laws 1917, c. 11, § 1, p. 70; Laws 1919, c. 156, § 1, p. 353; Laws 1921, c. 147, § 1, p. 624; Laws 1921, c. 174, § 1, p. 672; C.S.1922, § 504; Laws 1923, c. 34, § 1, p. 146; Laws 1925, c. 148, § 1, p. 386; Laws 1929, c. 57, § 1, p. 225; C.S.1929, § 24-607; Laws 1935, c. 46, § 1, p. 171; Laws 1937, c. 52, § 1, p. 218; C.S.Supp.,1941, § 24-607; R.S.1943, § 21-610; Laws 1986, LB 1177, § 3.

21-611 Corporate acts; how attested.

The act or acts of such corporations for all legal purposes shall be attested by the principal officer and the secretary under the seal of such corporation.

Source: Laws 1897, c. 20, § 4, p. 186; R.S.1913, § 611; C.S.1922, § 505; C.S.1929, § 24-608.

21-612 Subordinate organizations; operation of orphanages and other homes; incorporation; acquisition of property; use and investment of funds; power to borrow.

Fraternal, benevolent and charitable organizations in this state which have or may hereafter be duly incorporated by the laws of the state, are hereby authorized by and through their respective grand bodies issuing charters to their subordinates, to organize and create within their respective organizations, bodies corporate for the purpose of establishing and maintaining homes in this state for the care and maintenance of orphans, widows, aged and indigent persons, or for the care of such persons, under such rules, regulations and bylaws as such organization may provide; and to acquire and receive by donation, bequest, assessment and purchase and other legitimate means, property and funds for such purpose and to hold and invest all such property and funds thus acquired; to borrow money on its real estate and other property; to acquire, invest or reinvest its funds for the endowment of such homes, or its charges or inmates; to invest, reinvest or exchange its endowment funds upon such securities as its trustees may deem safe; to take and hold mortgages upon real estate and other securities therefor, to exchange the same, and to do all things necessary for the purposes and objects of charitable, benevolent and fraternal care of orphans, widows, aged and indigent persons who need such care. But no funds or other property thus acquired by any such fraternal, benevolent or charitable association shall ever be diverted from the objects and purposes herein stated.

Source: Laws 1907, c. 30, § 1, p. 157; R.S.1913, § 612; C.S.1922, § 506; C.S.1929, § 24-609.

21-613 Grand organizations; operation of orphanages and other homes; acquisition of property; use and investment of funds.

Any and all fraternal, benevolent and charitable grand bodies issuing charters to subordinates in this state, which grand bodies have been or may hereafter be incorporated by the laws of this state, may instead of forming an auxiliary corporation within their respective organizations for the purpose of carrying out the objects of section 21-612, proceed to acquire in the name of such grand body all necessary funds and property by donation, gift, bequests, purchase and other legitimate means, funds and property for the establishment and maintenance of homes for widows, orphans, aged and indigent persons within this state. Such grand bodies may hold, invest, reinvest and use all such funds and property in their respective names, and provide by bylaws the number of trustees or directors who shall have the supervision of such funds, property and home together with the tenure of office of such trustees or directors, and such grand body may make such rules and regulations for the government and maintenance and control of such homes or funds as may be necessary to promote the fraternal, benevolent, and charitable objects of the same for the care and maintenance of widows, orphans, aged and indigent persons.

Source: Laws 1907, c. 30, § 2, p. 158; R.S.1913, § 613; C.S.1922, § 507; C.S.1929, § 24-610.

21-614 Orphanages and other homes; books, inspection by Auditor of Public Accounts; diversion of property and funds; powers of Attorney General.

The books, records, and files pertaining to any such home shall be subject to the inspection of the Auditor of Public Accounts of this state, or any deputy or clerk authorized by him to inspect the same. Any organization maintaining such a home or funds is hereby required, at the request of the Auditor of Public Accounts, to report to his office in detail all matters required by him to be reported concerning the business of such funds, home or homes. In case of any diversion of the funds or other property acquired by any such organization from the object and purposes of such home or homes, or funds therefor, the Attorney General is hereby authorized to bring suit in any court having general jurisdiction in equity matters in the state, to restrain and prevent any diversion of such funds or property, and to adjust any and all wrongs concerning the same.

Source: Laws 1907, c. 30, § 3, p. 158; R.S.1913, § 614; C.S.1922, § 508; C.S.1929, § 24-611.

21-615 Orphanages and other homes; establishment; certified copy of charter to be filed.

Fraternal, benevolent and charitable organizations in this state which may adopt the provisions of sections 21-612 to 21-614, and which shall establish homes, or funds therefor, in accordance therewith, shall, in the case where a grand lodge or grand body desires to hold the property of such home or its funds in its own name, file with the Secretary of State a certified copy of its charter together with a statement of the number of trustees or directors authorized by it to transact the business pertaining to such home or homes or funds. In case a grand body mentioned in section 21-613 shall organize an auxiliary corporation for such purpose as provided in section 21-612, then and in such case such auxiliary corporation shall file with the Secretary of State a

copy of its articles of association, duly certified by the secretary of such association.

Source: Laws 1907, c. 30, § 4, p. 159; R.S.1913, § 615; C.S.1922, § 509; C.S.1929, § 24-612.

21-616 Orphanages and other homes; establishment under other laws.

Sections 21-612 to 21-615 shall not be considered to prohibit the formation of corporations under other corporation laws of this state.

Source: Laws 1907, c. 30, § 5, p. 159; R.S.1913, § 616; C.S.1922, § 510; C.S.1929, § 24-613.

21-617 Society names and emblems; registration.

Any association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans organization, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge, or auxiliary thereof, whether incorporated or unincorporated, the principles and activities of which are not repugnant to the Constitution and laws of the United States or this state, may register, in the office of the Secretary of State, a facsimile, duplicate or description of its name, badge, motto, button, decoration, charm, emblem, rosette or other insignia, and may, by reregistration alter or cancel the same.

Source: Laws 1929, c. 140, § 1, p. 496; C.S.1929, § 24-614.

21-618 Society names and emblems; registration; procedure; effect.

Application for such registration, alteration or cancellation shall be made by the chief officer or officers of said association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans organization, labor union, foundation, federation, or any other society, organization, or association, degree, branch, subordinate lodge, or auxiliary thereof, upon blanks to be provided by the Secretary of State; and such registration shall be for the use, benefit, and on behalf of all associations, degrees, branches, subordinate lodges, and auxiliaries of said association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans organization, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge, or auxiliary thereof, and the individual members and those hereafter to become members thereof, throughout this state.

Source: Laws 1929, c. 140, § 2, p. 496; C.S.1929, § 24-615.

21-619 Society names and emblems; registration; record.

The Secretary of State shall keep a properly indexed record of the registration provided for by sections 21-617 and 21-618, which record shall also show any altered or canceled registration.

Source: Laws 1929, c. 140, § 3, p. 497; C.S.1929, § 24-616.

21-620 Society names and emblems; similarity; registration not granted, when.

No registration shall be granted or alteration permitted to any association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans organization, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge, or auxiliary thereof, having a name, badge, motto, button, decoration, charm, emblem, rosette, or other insignia, similar to, imitating, or so nearly resembling as to be calculated to deceive, any other name, badge, button, decoration, charm, emblem, rosette, or other insignia whatsoever, already registered pursuant to the provisions of sections 21-617 to 21-619.

Source: Laws 1929, c. 140, § 4, p. 497; C.S.1929, § 24-617.

21-621 Society names and emblems; registration; certificate to issue.

Upon granting registration as aforesaid, the Secretary of State shall issue his certificate to the petitioners, setting forth the fact of such registration.

Source: Laws 1929, c. 140, § 5, p. 497; C.S.1929, § 24-618.

21-622 Society emblems; unlawful use; penalty.

Any person who shall willfully wear, exhibit, display, print or use, for any purpose, the badge, motto, button, decoration, charm, emblem, rosette, or other insignia of any such association or organization mentioned in section 21-617, duly registered hereunder, unless he or she shall be entitled to use and wear the same under the constitution and bylaws, rules and regulations of such association or organization, shall be guilty of a Class III misdemeanor.

Source: Laws 1929, c. 140, § 6, p. 497; C.S.1929, § 24-619; R.S.1943, § 21-622; Laws 1977, LB 40, § 77.

21-623 Society names and emblems; registration; fees.

The fees of the Secretary of State for registration, alteration, cancellation, searches made by him, and certificates issued by him, pursuant to sections 21-617 to 21-622, shall be as follows: One dollar and fifty cents for each registration, alteration, cancellation, search or reregistration; for the certificate contemplated in section 21-621, one dollar plus ten cents for each hundred words, or fraction thereof, set forth in said certificate issued. The fees collected under sections 21-617 to 21-624 shall be paid by the Secretary of State into the state treasury.

Source: Laws 1929, c. 140, § 7, p. 498; C.S.1929, § 24-620.

21-624 Society names and emblems; registration; organizations not affected.

The provisions of sections 21-617 to 21-623 shall not apply to or in any way affect any fraternal society, club, organization, or association connected with and recognized by any university, college, parochial school, high school, or other educational institution in the State of Nebraska.

Source: Laws 1929, c. 140, § 8, p. 498; C.S.1929, § 24-621; R.S.1943, § 21-624; Laws 1987, LB 31, § 1.

ARTICLE 7
EDUCATIONAL INSTITUTIONS

Section

21-701 Repealed. Laws 1961, c. 73, § 1.

21-702 Repealed. Laws 1961, c. 73, § 1.

21-703 Repealed. Laws 1961, c. 73, § 1.

21-704 Repealed. Laws 1961, c. 73, § 1.

21-705 Repealed. Laws 1961, c. 73, § 1.

21-706 Repealed. Laws 1961, c. 73, § 1.

21-707 Repealed. Laws 1961, c. 73, § 1.

21-708 Repealed. Laws 1961, c. 73, § 1.

21-709 Repealed. Laws 1961, c. 73, § 1.

21-710 Repealed. Laws 1961, c. 73, § 1.

21-711 Repealed. Laws 1961, c. 73, § 1.

21-712 Repealed. Laws 1961, c. 73, § 1.

21-713 Repealed. Laws 1961, c. 73, § 1.

21-714 Repealed. Laws 1961, c. 73, § 1.

21-715 Repealed. Laws 1961, c. 73, § 1.

21-716 Repealed. Laws 1961, c. 73, § 1.

21-717 Repealed. Laws 1961, c. 73, § 1.

21-718 Repealed. Laws 1961, c. 73, § 1.

21-719 Repealed. Laws 1961, c. 73, § 1.

21-720 Repealed. Laws 1961, c. 73, § 1.

21-721 Repealed. Laws 1961, c. 73, § 1.

21-722 Repealed. Laws 1961, c. 73, § 1.

21-723 Repealed. Laws 1961, c. 73, § 1.

21-724 Repealed. Laws 1961, c. 73, § 1.

21-725 Repealed. Laws 1961, c. 73, § 1.

21-726 Repealed. Laws 1961, c. 73, § 1.

21-727 Repealed. Laws 1961, c. 73, § 1.

21-728 Repealed. Laws 1961, c. 73, § 1.

21-729 Repealed. Laws 1961, c. 73, § 1.

21-730 Repealed. Laws 1961, c. 73, § 1.

21-731 Repealed. Laws 1961, c. 73, § 1.

ARTICLE 8
RELIGIOUS SOCIETIES

Section
21-801. Repealed. Laws 1967, c. 102, § 1.
21-802. Repealed. Laws 1967, c. 102, § 1.
21-803. Repealed. Laws 1967, c. 102, § 1.
21-804. Repealed. Laws 1967, c. 102, § 1.
21-805. Repealed. Laws 1967, c. 102, § 1.
21-806. Repealed. Laws 1967, c. 102, § 1.
21-807. Repealed. Laws 1967, c. 102, § 1.
21-808. Repealed. Laws 1967, c. 102, § 1.
21-809. Repealed. Laws 1967, c. 102, § 1.
21-810. Repealed. Laws 1967, c. 102, § 1.
21-811. Repealed. Laws 1967, c. 102, § 1.
21-812. Repealed. Laws 1967, c. 102, § 1.
21-813. Repealed. Laws 1967, c. 102, § 1.
21-814. Repealed. Laws 1967, c. 102, § 1.
21-815. Repealed. Laws 1967, c. 102, § 1.
21-816. Repealed. Laws 1967, c. 102, § 1.
21-817. Repealed. Laws 1967, c. 102, § 1.
21-818. Repealed. Laws 1967, c. 102, § 1.
21-819. Repealed. Laws 1967, c. 102, § 1.
21-820. Repealed. Laws 1967, c. 102, § 1.
21-821. Repealed. Laws 1967, c. 102, § 1.

Section
21-822. Repealed. Laws 1967, c. 102, § 1.
21-823. Repealed. Laws 1967, c. 102, § 1.
21-824. Repealed. Laws 1967, c. 102, § 1.
21-825. Repealed. Laws 1967, c. 102, § 1.
21-826. Repealed. Laws 1967, c. 102, § 1.
21-827. Repealed. Laws 1967, c. 102, § 1.
21-828. Repealed. Laws 1967, c. 102, § 1.
21-829. Repealed. Laws 1967, c. 102, § 1.
21-830. Repealed. Laws 1967, c. 102, § 1.
21-831. Repealed. Laws 1967, c. 102, § 1.
21-832. Repealed. Laws 1967, c. 102, § 1.
21-833. Repealed. Laws 1967, c. 102, § 1.
21-834. Repealed. Laws 1967, c. 102, § 1.
21-834.01. Repealed. Laws 1967, c. 102, § 1.
21-835. Repealed. Laws 1967, c. 102, § 1.
21-836. Repealed. Laws 1967, c. 102, § 1.
21-837. Repealed. Laws 1967, c. 102, § 1.
21-838. Repealed. Laws 1967, c. 102, § 1.
21-839. Repealed. Laws 1967, c. 102, § 1.
21-840. Repealed. Laws 1967, c. 102, § 1.
21-841. Repealed. Laws 1967, c. 102, § 1.
21-842. Repealed. Laws 1967, c. 102, § 1.
21-842.01. Repealed. Laws 1967, c. 102, § 1.
21-842.02. Repealed. Laws 1967, c. 102, § 1.
21-843. Repealed. Laws 1967, c. 102, § 1.
21-844. Repealed. Laws 1967, c. 102, § 1.
21-845. Repealed. Laws 1967, c. 102, § 1.
21-846. Repealed. Laws 1967, c. 102, § 1.
21-847. Repealed. Laws 1967, c. 102, § 1.
21-848. Repealed. Laws 1967, c. 102, § 1.
21-849. Repealed. Laws 1967, c. 102, § 1.
21-850. Repealed. Laws 1967, c. 102, § 1.
21-851. Repealed. Laws 1967, c. 102, § 1.
21-852. Repealed. Laws 1967, c. 102, § 1.
21-853. Repealed. Laws 1967, c. 102, § 1.
21-854. Repealed. Laws 1967, c. 102, § 1.

21-801 Repealed. Laws 1967, c. 102, § 1.

21-802 Repealed. Laws 1967, c. 102, § 1.

21-803 Repealed. Laws 1967, c. 102, § 1.

21-804 Repealed. Laws 1967, c. 102, § 1.

21-805 Repealed. Laws 1967, c. 102, § 1.

21-806 Repealed. Laws 1967, c. 102, § 1.

21-807 Repealed. Laws 1967, c. 102, § 1.

21-808 Repealed. Laws 1967, c. 102, § 1.

21-809 Repealed. Laws 1967, c. 102, § 1.

21-810 Repealed. Laws 1967, c. 102, § 1.

21-811 Repealed. Laws 1967, c. 102, § 1.

21-812 Repealed. Laws 1967, c. 102, § 1.

21-813 Repealed. Laws 1967, c. 102, § 1.

21-814 Repealed. Laws 1967, c. 102, § 1.

21-815 Repealed. Laws 1967, c. 102, § 1.

21-816 Repealed. Laws 1967, c. 102, § 1.

21-817 Repealed. Laws 1967, c. 102, § 1.

21-818 Repealed. Laws 1967, c. 102, § 1.

21-819 Repealed. Laws 1967, c. 102, § 1.

21-820 Repealed. Laws 1967, c. 102, § 1.

21-821 Repealed. Laws 1967, c. 102, § 1.

21-822 Repealed. Laws 1967, c. 102, § 1.

21-823 Repealed. Laws 1967, c. 102, § 1.

21-824 Repealed. Laws 1967, c. 102, § 1.

21-825 Repealed. Laws 1967, c. 102, § 1.

21-826 Repealed. Laws 1967, c. 102, § 1.

21-827 Repealed. Laws 1967, c. 102, § 1.

21-828 Repealed. Laws 1967, c. 102, § 1.

21-829 Repealed. Laws 1967, c. 102, § 1.

21-830 Repealed. Laws 1967, c. 102, § 1.

21-831 Repealed. Laws 1967, c. 102, § 1.

21-832 Repealed. Laws 1967, c. 102, § 1.

21-833 Repealed. Laws 1967, c. 102, § 1.

21-834 Repealed. Laws 1967, c. 102, § 1.

21-834.01 Repealed. Laws 1967, c. 102, § 1.

21-835 Repealed. Laws 1967, c. 102, § 1.

21-836 Repealed. Laws 1967, c. 102, § 1.

21-837 Repealed. Laws 1967, c. 102, § 1.

21-838 Repealed. Laws 1967, c. 102, § 1.

21-839 Repealed. Laws 1967, c. 102, § 1.

21-840 Repealed. Laws 1967, c. 102, § 1.

21-841 Repealed. Laws 1967, c. 102, § 1.

21-842 Repealed. Laws 1967, c. 102, § 1.

21-842.01 Repealed. Laws 1967, c. 102, § 1.

21-842.02 Repealed. Laws 1967, c. 102, § 1.

21-843 Repealed. Laws 1967, c. 102, § 1.

21-844 Repealed. Laws 1967, c. 102, § 1.

21-845 Repealed. Laws 1967, c. 102, § 1.

21-846 Repealed. Laws 1967, c. 102, § 1.

21-847 Repealed. Laws 1967, c. 102, § 1.

21-848 Repealed. Laws 1967, c. 102, § 1.

21-849 Repealed. Laws 1967, c. 102, § 1.

21-850 Repealed. Laws 1967, c. 102, § 1.

21-851 Repealed. Laws 1967, c. 102, § 1.

21-852 Repealed. Laws 1967, c. 102, § 1.

21-853 Repealed. Laws 1967, c. 102, § 1.

21-854 Repealed. Laws 1967, c. 102, § 1.

ARTICLE 9
PROFESSIONAL AND SIMILAR ASSOCIATIONS

Section

21-901 Repealed. Laws 1961, c. 76, § 1.

21-902 Repealed. Laws 1961, c. 76, § 1.

21-903 Repealed. Laws 1961, c. 76, § 1.

21-904 Repealed. Laws 1961, c. 76, § 1.

21-905 Repealed. Laws 1961, c. 76, § 1.

21-906 Repealed. Laws 1961, c. 76, § 1.

21-907 Repealed. Laws 1961, c. 76, § 1.

21-908 Repealed. Laws 1961, c. 76, § 1.

21-909 Repealed. Laws 1961, c. 76, § 1.

21-910 Repealed. Laws 1961, c. 76, § 1.

21-911 Repealed. Laws 1961, c. 76, § 1.

21-912 Repealed. Laws 1961, c. 76, § 1.

21-913 Repealed. Laws 1961, c. 76, § 1.

21-914 Repealed. Laws 1961, c. 76, § 1.

ARTICLE 10
BURIAL ASSOCIATIONS

Section
21-1001. Repealed. Laws 1967, c. 102, § 1.
21-1002. Repealed. Laws 1967, c. 102, § 1.
21-1003. Repealed. Laws 1967, c. 102, § 1.
21-1004. Repealed. Laws 1967, c. 102, § 1.
21-1005. Repealed. Laws 1967, c. 102, § 1.
21-1006. Repealed. Laws 1967, c. 102, § 1.
21-1007. Repealed. Laws 1967, c. 102, § 1.
21-1008. Repealed. Laws 1967, c. 102, § 1.
21-1009. Repealed. Laws 1967, c. 102, § 1.
21-1010. Repealed. Laws 1967, c. 102, § 1.
21-1011. Repealed. Laws 1967, c. 102, § 1.
21-1012. Repealed. Laws 1967, c. 102, § 1.
21-1013. Repealed. Laws 1967, c. 102, § 1.
21-1014. Repealed. Laws 1967, c. 102, § 1.
21-1015. Repealed. Laws 1967, c. 102, § 1.
21-1016. Repealed. Laws 1967, c. 102, § 1.
21-1017. Repealed. Laws 1967, c. 102, § 1.

21-1001 Repealed. Laws 1967, c. 102, § 1.

21-1002 Repealed. Laws 1967, c. 102, § 1.

21-1003 Repealed. Laws 1967, c. 102, § 1.

21-1004 Repealed. Laws 1967, c. 102, § 1.

21-1005 Repealed. Laws 1967, c. 102, § 1.

21-1006 Repealed. Laws 1967, c. 102, § 1.

21-1007 Repealed. Laws 1967, c. 102, § 1.

21-1008 Repealed. Laws 1967, c. 102, § 1.

21-1009 Repealed. Laws 1967, c. 102, § 1.

21-1010 Repealed. Laws 1967, c. 102, § 1.

21-1011 Repealed. Laws 1967, c. 102, § 1.

21-1012 Repealed. Laws 1967, c. 102, § 1.

21-1013 Repealed. Laws 1967, c. 102, § 1.

21-1014 Repealed. Laws 1967, c. 102, § 1.

21-1015 Repealed. Laws 1967, c. 102, § 1.

21-1016 Repealed. Laws 1967, c. 102, § 1.

21-1017 Repealed. Laws 1967, c. 102, § 1.

ARTICLE 11

FONTENELLE FOREST ASSOCIATION

Section

21-1101 Legislative grant of charter; reservation of power to change.

Fontenelle Forest Association is hereby authorized to organize as a corporation not for profit under the provisions of the Nebraska Nonprofit Corporation Act. Upon so organizing, it shall have all of the powers and immunities provided for by such act and shall in all respects be subject to the provisions of such act, and for all purposes shall be deemed the successor to Fontenelle Forest Association as now organized and constituted.

Source: Laws 1913, c. 176, § 1, p. 531; R.S.1913, § 714; C.S.1922, § 623; C.S.1929, § 24-1101; R.S.1943, § 21-1101; Laws 1969, c. 125, § 1, p. 576; Laws 1996, LB 681, § 179.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

21-1102 Repealed. Laws 1969, c. 125, § 2.

21-1103 Repealed. Laws 1969, c. 125, § 2.

21-1104 Repealed. Laws 1969, c. 125, § 2.

21-1105 Repealed. Laws 1969, c. 125, § 2.

21-1106 Repealed. Laws 1969, c. 125, § 2.

21-1107 Repealed. Laws 1969, c. 125, § 2.

21-1108 Repealed. Laws 1969, c. 125, § 2.

21-1109 Repealed. Laws 1969, c. 125, § 2.

21-1110 Repealed. Laws 1969, c. 125, § 2.

21-1111 Repealed. Laws 1969, c. 125, § 2.

ARTICLE 12
FOREIGN CORPORATIONS

Section
21-1201. Repealed. Laws 1963, c. 98, § 135.
21-1202. Repealed. Laws 1963, c. 98, § 135.
21-1203. Repealed. Laws 1963, c. 98, § 135.
21-1204. Repealed. Laws 1963, c. 98, § 135.
21-1205. Repealed. Laws 1963, c. 98, § 135.
21-1206. Repealed. Laws 1963, c. 98, § 135.
21-1207. Repealed. Laws 1963, c. 98, § 135.
21-1208. Repealed. Laws 1963, c. 98, § 135.
21-1209. Repealed. Laws 1963, c. 98, § 135.
21-1209.01. Repealed. Laws 1963, c. 98, § 135.
21-1210. Repealed. Laws 1963, c. 98, § 135.
21-1211. Repealed. Laws 1963, c. 98, § 135.
21-1212. Repealed. Laws 1963, c. 98, § 135.
21-1213. Repealed. Laws 1963, c. 98, § 135.
21-1214. Repealed. Laws 1963, c. 98, § 135.
21-1215. Repealed. Laws 1963, c. 98, § 135.
21-1216. Repealed. Laws 1963, c. 98, § 135.
21-1217. Repealed. Laws 1963, c. 98, § 135.

21-1201 Repealed. Laws 1963, c. 98, § 135.

21-1202 Repealed. Laws 1963, c. 98, § 135.

21-1203 Repealed. Laws 1963, c. 98, § 135.

21-1204 Repealed. Laws 1963, c. 98, § 135.

21-1205 Repealed. Laws 1963, c. 98, § 135.

21-1206 Repealed. Laws 1963, c. 98, § 135.

21-1207 Repealed. Laws 1963, c. 98, § 135.

21-1208 Repealed. Laws 1963, c. 98, § 135.

21-1209 Repealed. Laws 1963, c. 98, § 135.

21-1209.01 Repealed. Laws 1963, c. 98, § 135.

21-1210 Repealed. Laws 1963, c. 98, § 135.

21-1211 Repealed. Laws 1963, c. 98, § 135.

21-1212 Repealed. Laws 1963, c. 98, § 135.

21-1213 Repealed. Laws 1963, c. 98, § 135.

21-1214 Repealed. Laws 1963, c. 98, § 135.

21-1215 Repealed. Laws 1963, c. 98, § 135.

21-1216 Repealed. Laws 1963, c. 98, § 135.

21-1217 Repealed. Laws 1963, c. 98, § 135.

ARTICLE 13
COOPERATIVE COMPANIES

Cross References

False statement or book entry, penalty, see section 28-612.
Reorganization as credit union, see section 21-17,109.
Transactions exempt from Securities Act of Nebraska, see section 8-1111.

(a) GENERAL PROVISIONS

Section
21-1301. Cooperative corporation; formation; general purposes and powers; exceptions; action by cooperative corporation; vote required.
21-1302. Cooperative corporation; articles of incorporation; provisions.
21-1303. Cooperative corporation; additional powers; stockholder vote; conditions; adoption of articles and bylaws.
21-1304. Cooperative corporation; contracts with members; provisions; damages for breach.
21-1305. Cooperative corporation; fees, filings, and reports.
21-1306. Cooperative; use of word restricted; penalty for violation.
21-1307. Repealed. Laws 1963, c. 102, § 4.

(b) COOPERATIVE CREDIT ASSOCIATIONS

21-1308. Repealed. Laws 2002, LB 1094, § 19.
21-1309. Repealed. Laws 2002, LB 1094, § 19.
21-1310. Repealed. Laws 2002, LB 1094, § 19.
21-1311. Repealed. Laws 2002, LB 1094, § 19.
21-1312. Repealed. Laws 2002, LB 1094, § 19.
21-1313. Repealed. Laws 2002, LB 1094, § 19.
21-1314. Repealed. Laws 2002, LB 1094, § 19.
21-1315. Repealed. Laws 2002, LB 1094, § 19.
21-1316. Repealed. Laws 2002, LB 1094, § 19.
21-1316.01. Repealed. Laws 2002, LB 1094, § 19.
21-1317. Repealed. Laws 2002, LB 1094, § 19.
21-1318. Repealed. Laws 2002, LB 1094, § 19.
21-1319. Repealed. Laws 2002, LB 1094, § 19.
21-1320. Repealed. Laws 2002, LB 1094, § 19.
21-1320.01. Repealed. Laws 2002, LB 1094, § 19.
21-1321. Repealed. Laws 2002, LB 1094, § 19.
21-1322. Repealed. Laws 2002, LB 1094, § 19.
21-1323. Repealed. Laws 2002, LB 1094, § 19.
21-1324. Repealed. Laws 2002, LB 1094, § 19.
21-1325. Repealed. Laws 2002, LB 1094, § 19.
21-1326. Repealed. Laws 2002, LB 1094, § 19.
21-1326.01. Repealed. Laws 2002, LB 1094, § 19.
21-1327. Repealed. Laws 2002, LB 1094, § 19.
21-1327.01. Repealed. Laws 2002, LB 1094, § 19.
21-1328. Repealed. Laws 2002, LB 1094, § 19.
21-1329. Repealed. Laws 2002, LB 1094, § 19.
21-1330. Repealed. Laws 2002, LB 1094, § 19.
21-1331. Repealed. Laws 2002, LB 1094, § 19.
21-1331.01. Repealed. Laws 2002, LB 1094, § 19.
21-1332. Repealed. Laws 2002, LB 1094, § 19.

(c) COOPERATIVE FARM LAND COMPANIES

21-1333. Cooperative farm land company; incorporation; purposes; general powers.
21-1334. Cooperative farm land company; articles of incorporation; contents; new members.
21-1335. Cooperative farm land company; corporate powers.
21-1336. Cooperative farm land company; annual report; contents; fee.

(a) GENERAL PROVISIONS

21-1301 Cooperative corporation; formation; general purposes and powers; exceptions; action by cooperative corporation; vote required.

Any number of persons, not less than ten, or one or more cooperative companies, may form and organize a cooperative corporation for the transaction of any lawful business by the adoption of articles of incorporation in the same manner and with like powers and duties as is required of other corporations except as provided in sections 21-1301 to 21-1306. Nothing in sections 21-1301 and 21-1303 shall be deemed to apply to electrical cooperatives or electric member associations. If the Business Corporation Act requires an affirmative vote of a specified percentage of stockholders before action can be taken by a corporation, such percentage for a cooperative corporation shall be of the votes cast on the matter at the stockholders' meeting at which the same shall be voted upon.

Source: Laws 1911, c. 32, § 2, p. 196; R.S.1913, § 734; Laws 1919, c. 197, § 3, p. 879; Laws 1921, c. 28, § 1, p. 161; C.S.1922, § 642; Laws 1925, c. 79, § 1, p. 243; C.S.1929, § 24-1301; R.S.1943, § 21-1301; Laws 1963, c. 102, § 1, p. 422; Laws 1975, LB 156, § 1; Laws 1995, LB 109, § 203.

Cross References

Business Corporation Act, see section 21-2001.
Transactions exempt from Securities Act of Nebraska, see section 8-1111.

Organization of cooperative association as a corporation is authorized. Schmeckpeper v. Panhandle Coop. Assn., 180 Neb. 352, 143 N.W.2d 113 (1966).

Farmers' cooperative company organized under this article is not necessarily exempt from federal income tax. Farmers Union Co-op. Co. of Guide Rock v. Commissioner of Internal Revenue, 90 F.2d 488 (8th Cir. 1937).

21-1302 Cooperative corporation; articles of incorporation; provisions.

Every such cooperative company shall provide in its articles of incorporation:

(1) That the word cooperative shall be included in its corporate name, and that it proposes to organize as a cooperative corporation;

(2) That dividends on the capital stock shall be fixed but shall not exceed eight percent per annum of the amount actually paid thereon;

(3) That the net earnings or savings of the company remaining after making the distribution provided in subdivision (2) of this section, if any, shall be distributed on the basis of or in proportion to the amount or value of property bought from or sold to members, or members and other patrons, or of labor performed, or other services rendered to the corporation; *Provided,* that this subdivision shall not be so interpreted as to prevent a cooperative company from declaring patronage dividends at different rates upon different classes or kinds or varieties of goods handled; *and provided further,* that nothing in subdivision (2) or (3) of this section shall be so interpreted as to prevent a

company from appropriating funds for the promotion of cooperation and improvement in agriculture;

(4) That the articles of incorporation or the bylaws of the company shall give a detailed statement of the method followed in distributing earnings or savings;

(5) The registered office and street address of such registered office;

(6) The registered agent and the name and street address of such registered agent; and

(7) The name and street address of each incorporator.

Source: Laws 1921, c. 28, § 2, p. 161; C.S.1922, § 643; Laws 1925, c. 79, § 2, p. 243; C.S.1929, § 24-1302; R.S.1943, § 21-1302; Laws 1963, c. 102, § 2, p. 423; Laws 1967, c. 103, § 1, p. 318.

The requirement of the accumulation of a surplus equal to twenty percent does not restrict the corporation from providing a greater amount. Schmeckpeper v. Panhandle Coop. Assn., 180 Neb. 352, 143 N.W.2d 113 (1966).

21-1303 Cooperative corporation; additional powers; stockholder vote; conditions; adoption of articles and bylaws.

Every cooperative company which shall organize under sections 21-1301 and 21-1302 shall have power (1) to regulate and limit the right of stockholders to transfer their stock, (2) to restrict stock ownership to producers of agricultural products and, if such restriction is adopted, to provide an equitable procedure for redeeming the stock of any holder who is determined not to be a producer of agricultural products, (3) to provide that each individual holder of common stock may be limited to one vote per person, regardless of the number of shares of stock which he or she may own, at any stockholders' meeting and that such vote may be cast only in person, or by a signed, written vote if the stockholder has been previously notified in writing of the exact motion or resolution on which the vote is taken, (4) to limit the amount of capital stock that any one person or corporation may own either directly or indirectly, (5) to prohibit or to limit the amount or percentage of the total business which may be transacted with nonmembers, (6) to set aside each year to a surplus fund a portion of the savings of the company over and above all expenses and dividends or interest upon capital stock which surplus may be used for conducting the business of the corporation, and (7) to adopt articles and bylaws for the management and regulation of the affairs of the company which shall set the number of directors, the terms of such directors, including any provisions for the staggering of such terms, the number or percentage of stockholders or shares of stock required to be present, in person or by proxy, in order to constitute a quorum at each stockholders' meeting, which number or percentage shall not be less than ten percent of the stockholders but never more than fifty nor less than five stockholders. Members represented by signed, written vote may be counted in computing a quorum only on those questions as to which the signed, written vote is taken.

Source: Laws 1911, c. 32, § 3, p. 196; R.S.1913, § 735; Laws 1919, c. 57, § 1, p. 161; Laws 1921, c. 28, § 3, p. 162; C.S.1922, § 644; Laws 1925, c. 79, § 3, p. 244; C.S.1929, § 24-1303; R.S.1943, § 21-1303; Laws 1961, c. 79, § 1, p. 288; Laws 1963, c. 102, § 3, p. 423; Laws 1965, c. 89, § 1, p. 356; Laws 1975, LB 156, § 2; Laws 1981, LB 283, § 1.

Cooperative associations are given power to engage in enterprises requiring capital. Schmeckpeper v. Panhandle Coop. Assn., 180 Neb. 352, 143 N.W.2d 113 (1966).

21-1304 Cooperative corporation; contracts with members; provisions; damages for breach.

The contracts mentioned in section 21-1303 may require the members to sell, for any period of time not over five years, all or a stipulated part of their specifically enumerated products through the association or to buy specifically enumerated supplies exclusively through the association, but in such case a reasonable period during each year after the first two years of the contract shall be specified during which any member, by giving notice in prescribed form, may be released from such obligation thereafter. In order to protect itself in the necessary outlay, which it may make for the maintenance of its services, and likewise to reimburse the association for any loss or damage which it or its members may sustain through a member's failure to deliver his products to, or to procure his supplies from the association, the association may stipulate that some regular charge shall be paid by the members for each unit of goods covered by such contract, whether actually handled by the association or not. In case it is difficult or impracticable to determine the actual amount of damage suffered by the association or its members through such failure to comply with the terms of such contract, the association and the members may agree upon a sum to be paid as liquidated damages for the breach of the contract, the amount to be stated in the contract.

Source: Laws 1925, c. 79, § 3, p. 245; C.S.1929, § 24-1303.

21-1305 Cooperative corporation; fees, filings, and reports.

The fees for the incorporation of cooperative companies shall be the same as those required by law of other corporations. Such cooperative corporations shall be required to make the same reports and filings as is required of other corporations.

Source: Laws 1911, c. 32, § 5, p. 197; R.S.1913, § 737; Laws 1921, c. 28, § 4, p. 162; C.S.1922, § 645; C.S.1929, § 24-1304.

21-1306 Cooperative; use of word restricted; penalty for violation.

No corporation, company, firm or association which shall not be incorporated as a cooperative corporation shall adopt or use the words cooperative or any abbreviation thereof as a part of its name. Any person or company violating the provisions of this section shall be guilty of a Class V misdemeanor for each day's continuance of the offense.

Source: Laws 1921, c. 28, § 5, p. 162; C.S.1922, § 646; C.S.1929, § 24-1305; R.S.1943, § 21-1306; Laws 1977, LB 40, § 78.

21-1307 Repealed. Laws 1963, c. 102, § 4.

(b) COOPERATIVE CREDIT ASSOCIATIONS

21-1308 Repealed. Laws 2002, LB 1094, § 19.

21-1309 Repealed. Laws 2002, LB 1094, § 19.

21-1310 Repealed. Laws 2002, LB 1094, § 19.

21-1311 Repealed. Laws 2002, LB 1094, § 19.

21-1312 Repealed. Laws 2002, LB 1094, § 19.

21-1313 Repealed. Laws 2002, LB 1094, § 19.

21-1314 Repealed. Laws 2002, LB 1094, § 19.

21-1315 Repealed. Laws 2002, LB 1094, § 19.

21-1316 Repealed. Laws 2002, LB 1094, § 19.

21-1316.01 Repealed. Laws 2002, LB 1094, § 19.

21-1317 Repealed. Laws 2002, LB 1094, § 19.

21-1318 Repealed. Laws 2002, LB 1094, § 19.

21-1319 Repealed. Laws 2002, LB 1094, § 19.

21-1320 Repealed. Laws 2002, LB 1094, § 19.

21-1320.01 Repealed. Laws 2002, LB 1094, § 19.

21-1321 Repealed. Laws 2002, LB 1094, § 19.

21-1322 Repealed. Laws 2002, LB 1094, § 19.

21-1323 Repealed. Laws 2002, LB 1094, § 19.

21-1324 Repealed. Laws 2002, LB 1094, § 19.

21-1325 Repealed. Laws 2002, LB 1094, § 19.

21-1326 Repealed. Laws 2002, LB 1094, § 19.

21-1326.01 Repealed. Laws 2002, LB 1094, § 19.

21-1327 Repealed. Laws 2002, LB 1094, § 19.

21-1327.01 Repealed. Laws 2002, LB 1094, § 19.

21-1328 Repealed. Laws 2002, LB 1094, § 19.

21-1329 Repealed. Laws 2002, LB 1094, § 19.

21-1330 Repealed. Laws 2002, LB 1094, § 19.

21-1331 Repealed. Laws 2002, LB 1094, § 19.

21-1331.01 Repealed. Laws 2002, LB 1094, § 19.

21-1332 Repealed. Laws 2002, LB 1094, § 19.

(c) COOPERATIVE FARM LAND COMPANIES

21-1333 Cooperative farm land company; incorporation; purposes; general powers.

Any number of persons, not less than five, may form and organize a cooperative farm land company, with or without capital stock, for the purpose

of facilitating the acquisition of agricultural and grazing lands by farmers and stock raisers, by the adoption of articles of incorporation in the same manner and with like powers and duties as other corporations, except as herein provided.

Source: Laws 1941, c. 38, § 1, p. 153; C.S.Supp.,1941, § 24-2101.

21-1334 Cooperative farm land company; articles of incorporation; contents; new members.

Every such cooperative farm land company shall provide in its articles of incorporation (1) that the word cooperative shall be included in its corporate name and that it proposes to organize as a cooperative farm land company; (2) if organized with capital stock, that no one person shall own either directly or indirectly more than five percent of the capital stock of the company; (3) if organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed; and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules; and (4) that dividends on the capital stock shall be fixed by the company, but shall in no event exceed six percent per annum of the amount actually paid thereon.

Source: Laws 1941, c. 38, § 2, p. 153; C.S.Supp.,1941, § 24-2102.

21-1335 Cooperative farm land company; corporate powers.

Every cooperative corporation that shall organize under sections 21-1333 to 21-1339 shall have power (1) to have succession by its corporate name, (2) to sue and be sued, (3) to make and use a common seal and alter the same at its pleasure, (4) to regulate and limit the right of stockholders to transfer their stock, (5) to appoint such subordinate officers and agents as the business of the corporation shall require and to allow them suitable compensation, (6) to adopt bylaws for the management and regulation of the affairs of the company, (7) to purchase, hold, sell, assign, or transfer the shares of the capital stock of other cooperative companies which it may own, and while owner of such stock to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, (8) to provide that each individual stockholder may be limited to one vote per person regardless of the number of shares of stock which he or she may own, (9) to prohibit proxy voting and to permit voting by mail under such regulations as shall be provided for in the bylaws, (10) to engage in any activity in connection with the purchase, lease or acquisition of agricultural and grazing lands and to improve or develop such land and to mortgage, or otherwise encumber the same, (11) to contract with its members and with other cooperative organizations organized hereunder for the sale, purchase or lease of such lands with such provisions for periodical payments, reserves, reamortization, supervision of the use of the lands, crop programming, and other factors as shall be agreed upon by such contracting parties, (12) to make contracts with the United States or the State of Nebraska, or any agency thereof, for the purpose of effectuating any plan for rural rehabilitation or with any nonprofit corporation organized for such purpose, (13) to provide that continued membership in such cooperative farm land company shall be dependent upon the

performance by members of contracts entered into between themselves and said cooperative farm land company, (14) to purchase, own, sell, lease, mortgage, or otherwise acquire and convey real or personal property or any interest therein, (15) to borrow money necessary or convenient to the accomplishment of the purposes of this corporation and to secure the payment thereof by mortgage, pledge or conveyance in trust, of the whole or any part of the property of the corporation, and (16) to do each and everything necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated and to contract accordingly, and in addition to exercise and possess all powers, rights, and privileges granted by the laws of this state to ordinary corporations and to corporations organized under sections 21-1301 to 21-1306 and 21-1401 to 21-1414, and any amendments thereto.

Source: Laws 1941, c. 38, § 3, p. 153; C.S.Supp.,1941, § 24-2103; R.S. 1943, § 21-1335; Laws 2002, LB 1094, § 10.

21-1336 Cooperative farm land company; annual report; contents; fee.

(1) Each cooperative farm land company organized hereunder shall make a report in writing to the Secretary of State annually during the month of November in such form as the secretary may prescribe for the reports of nonprofit corporations. The report shall be signed and sworn to, before an officer authorized to administer oaths, by the president, vice president, secretary or other chief officer of the corporation, and forwarded to the Secretary of State.

(2) Such report shall show (a) the name of the corporation, (b) the location of its principal office, (c) the names of the president, secretary-treasurer, and members of the board of trustees or directors, with post office address of each, (d) the date of the annual election of such corporation, and (e) the object or purpose which such corporation is engaged in carrying out.

(3) Upon the filing of such report as provided in subdivisions (1) and (2) of this section, the Secretary of State shall charge and collect a fee of one dollar on or before the first of January next following, which fee shall be in lieu of occupation tax fees.

Source: Laws 1941, c. 38, § 4, p. 154; C.S.Supp.,1941, § 24-2104.

21-1337 Cooperative farm land company; certificate of compliance; occupation tax laws inapplicable.

Upon the filing of the report and the payment of the fee provided for in section 21-1336, the Secretary of State shall make out and deliver to such corporation a certificate witnessing the compliance by such corporation with section 21-1336 and the payment of the annual fee therein provided for. No further compliance with sections 21-301 to 21-325 shall be required of such cooperative farm land companies.

Source: Laws 1941, c. 38, § 5, p. 155; C.S.Supp.,1941, § 24-2105; R.S. 1943, § 21-1337; Laws 1988, LB 800, § 6.

21-1338 Cooperative farm land company; fees; disposition.

Annual fees collected under section 21-1336 shall be reported by the Secretary of State to the Tax Commissioner, and shall be paid by the secretary into the state treasury and credited to the General Fund.

Source: Laws 1941, c. 38, § 6, p. 155; C.S.Supp.,1941, § 24-2106.

21-1339 Cooperative farm land company; investment in purchase-money mortgages by insurance companies, authorized.

Obligations of a cooperative farm land company secured by a first mortgage on agricultural lands purchased by a cooperative farm land company shall be a lawful investment for funds of any insurance company which has conveyed real estate to the company to the full extent of the purchase price.

Source: Laws 1941, c. 38, § 7, p. 155; C.S.Supp.,1941, § 24-2107; R.S. 1943, § 21-1339; Laws 1991, LB 237, § 55.

ARTICLE 14

NONSTOCK COOPERATIVE MARKETING COMPANIES

Section

21-1401 Terms, defined; act, how cited.

(1) For purposes of the Nonstock Cooperative Marketing Act, unless the context otherwise requires: (a) The term association means any corporation formed hereunder; (b) the term member means a person who owns a certificate of membership in an association formed without capital stock; (c) the term person means an individual, a partnership, a limited liability company, a corporation, an association, or two or more persons having a joint or common interest; (d) the term agricultural products or products means field crops, horticultural, viticultural, forestry, nut, dairy, livestock, poultry, bee and farm products, and the byproducts derived from any of them; and (e) the words used to import the singular may be applied to the plural as the context may demand.

(2) Associations organized hereunder shall be deemed nonprofit, inasmuch as they are not organized to make profits for themselves as such or for their members as such but only for their members as producers.

(3) Sections 21-1401 to 21-1414 shall be known and may be cited as the Nonstock Cooperative Marketing Act.

Source: Laws 1925, c. 80, § 1, p. 247; C.S.1929, § 24-1401; R.S.1943, § 21-1401; Laws 1993, LB 121, § 150.

Cross References

Transactions exempt from Securities Act of Nebraska, see section 8-1111.

A nonstock cooperative corporation formed pursuant to this section is not a ''non-profit corporation'' as that term is used in Neb. Const. art. XII, section 8(1)(B), because it exists and operates for the economic benefit of its members. Pig Pro Nonstock Co-op v. Moore, 253 Neb. 72, 568 N.W.2d 217 (1997).

Statutory definition of ''agricultural products'' used herein was adopted by court as applicable to hauling by contract carrier. Rodgers v. Nebraska State Railway Commission, 134 Neb. 832, 279 N.W. 800 (1938).

Common membership in nonstock cooperative association did not authorize injunction against prosecution of suits against individual members on note given for membership. Epp v. Federal Trust Company, 123 Neb. 375, 242 N.W. 922 (1932).

21-1402 Formation; purposes.

Any number of persons, not less than five, engaged in the production of agricultural products or two or more nonprofit cooperative companies, stock or nonstock, may form a cooperative association without capital stock for the transaction of any lawful business by the adoption of articles of incorporation, as set forth in Chapter 21, article 14.

Source: Laws 1925, c. 80, § 2, p. 248; C.S.1929, § 24-1402; R.S.1943, § 21-1402; Laws 1951, c. 40, § 1, p. 146; Laws 1981, LB 283, § 2.

21-1403 Articles of incorporation; contents.

Every nonstock cooperative association, organized under the provisions of Chapter 21, article 14, shall provide in its articles of incorporation: (1) That the words nonstock cooperative shall be included in its corporate name, and that it proposes to organize as a cooperative association; (2) the objects or purposes for which it is formed; (3) that the net earnings or savings of the association, if any, shall be distributed on the basis of, or in proportion to, the amount or value of property bought from or sold to members, or members and other patrons, or of labor performed, or other services rendered to the corporation, except that this provision shall not be so interpreted as to prevent a cooperative company from declaring patronage dividends at different rates upon different classes or kinds or varieties of goods handled; (4) that the articles of incorporation or the bylaws of the company shall give a detailed statement of the method followed in distributing earnings or savings; (5) the registered office and street address of such registered office; (6) the registered agent and the name and street address of such registered agent; and (7) the name and street address of each incorporator.

Source: Laws 1925, c. 80, § 3, p. 248; C.S.1929, § 24-1403; R.S.1943, § 21-1403; Laws 1967, c. 104, § 1, p. 320; Laws 1981, LB 283, § 3.

21-1404 Articles of incorporation; filing; certified copy as evidence; fees.

The articles of incorporation and amendments thereof shall be filed in accordance with the general corporation laws of this state and when so filed the said articles of incorporation and amendments thereof or certified copies thereof shall be received in all the courts of this state as prima facie evidence of the facts contained therein and of the due incorporation of such association. The fees for the incorporation of nonstock cooperative associations shall be the same as those required by law of other nonprofit corporations.

Source: Laws 1925, c. 80, § 4, p. 249; C.S.1929, § 24-1404; R.S.1943, § 21-1404; Laws 1981, LB 283, § 4.

21-1405 Powers.

Each association incorporated hereunder shall have the following powers: (1) To enter into contracts with its members for periods not over five years, requiring them to sell or market all or a specified part of their livestock or other products to or through the association, or to buy all, or a specified part, of their farm supplies from or through the association; (2) to act as agent or representative of any member or members or of nonmembers in carrying out the objects of the association; (3) to set aside each year to a surplus fund a portion of the savings of the company which surplus may be used for conducting the business of the corporation; and (4) to adopt articles and bylaws for the management of the association which shall also set the number or percentage of members required to be present in order to constitute a quorum at each members' meeting, which number or percentage shall not be less than ten percent of the members, but not more than fifty members, nor less than five members, except when the total membership is ten or less.

Source: Laws 1925, c. 80, § 5, p. 249; C.S.1929, § 24-1405; R.S.1943, § 21-1405; Laws 1977, LB 155, § 1; Laws 1981, LB 283, § 5.

21-1406 Members; eligibility; suspension or withdrawal; voting; liability for corporate debts; certificate of membership.

Only persons engaged in the production of the agricultural products, including lessees and landlords receiving such products as rent except as otherwise provided herein, or cooperative associations of such producers, shall be eligible to membership therein, subject to the terms and conditions prescribed in its articles of incorporation or bylaws consistent herewith. Only members of an association shall have the right to vote, and no member shall be entitled to more than one vote upon any question or matter affecting the association or relating to its affairs. Articles of incorporation hereunder may provide that no voting by proxy shall be permitted and such articles or bylaws adopted thereunder may further provide that a written vote received by mail from any absent member, and signed by him or her, may be read and counted at any regular or special meeting of the association, provided that the secretary shall notify all members in writing of the exact motion or resolution upon which such vote is to be taken, and a copy of same shall be forwarded with and attached to the vote so mailed by the member, and elections may be carried out in a similar manner. No member of an association shall be liable for its debts or obligations beyond the unpaid amount, if any, due by him or her on his or her membership dues. Every association formed hereunder shall issue a certificate of membership to each member which, unless otherwise provided in its articles of incorporation or bylaws, shall be nontransferable. Following the ascertainment through procedure set forth in its bylaws that a member has ceased to be eligible to membership in an association, his or her rights therein may be suspended. In the event of the death, withdrawal or expulsion of a member, the board of directors shall within a reasonable time thereafter equitably and conclusively ascertain the value of such member's membership, if any, which shall be paid him or her or his or her legal representatives by the association within a reasonable time after such ascertainment.

Source: Laws 1925, c. 80, § 6, p. 250; C.S.1929, § 24-1406; R.S.1943, § 21-1406; Laws 1977, LB 155, § 2; Laws 1981, LB 283, § 6.

21-1407 Bylaws.

Each association incorporated hereunder shall make such provision as it may desire for the adoption of its board of directors of a code of bylaws for the government and management of its business consistent herewith.

Source: Laws 1925, c. 80, § 7, p. 251; C.S.1929, § 24-1407.

21-1408 Directors; duties and powers; annual and special meetings; notice.

In its bylaws, each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time; and ten percent of the members may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten days prior to the meeting; *Provided, however,* that the bylaws may require instead that such notice may be given by publication in a newspaper or newspapers of general circulation, in the territory in which the association has its membership.

Source: Laws 1925, c. 80, § 8, p. 251; C.S.1929, § 24-1408.

21-1409 Repealed. Laws 1981, LB 283, § 7.

21-1410 Marketing contracts; breach; rights of association.

The marketing contract of any association formed hereunder may fix as liquidated damages, specific, reasonable sums to be paid by a member to the association upon the breach by him of any of the provisions of the marketing contract regarding the sale or delivery or withholding of products, and may further provide that the member will pay all costs, premium for bonds, expenses and fees in case any action is brought upon the contract by the association, and any such provision shall be valid and enforceable in the courts of this state and shall not be construed as a penalty. In the event of a breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract, and to a decree for the specific performance hereof. Pending the adjudication of such an action and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

Source: Laws 1925, c. 80, § 10, p. 252; C.S.1929, § 24-1410.

21-1411 Federation of associations; acquisition of stock or membership; agreements.

To effectuate the formation of federations of nonprofit associations of producers, any such association of producers whether formed hereunder or not is hereby authorized to acquire membership or stock in any other such association of producers, and any such association is hereby authorized to grant such membership or sell such stock to such associations, and any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements, and make all necessary and proper stipulations, agreements and contracts with any other cooperative corporation, association, or associations, formed in this or in any other state, for the cooperative and more economical carrying out of its business, or any part thereof. Any two

or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same methods, means, and agencies for carrying on and conducting their respective business.

Source: Laws 1925, c. 80, § 11, p. 252; C.S.1929, § 24-1411.

21-1412 Cooperative; use of term restricted.

No association, corporation, or organization shall use the term cooperative as a part of its name unless it is in fact operating on a cooperative basis.

Source: Laws 1925, c. 80, § 12, p. 253; C.S.1929, § 24-1412.

21-1413 Repealed. Laws 1981, LB 283, § 7.

21-1414 Application of general corporation laws.

The provisions of the general corporation laws of this state, and all powers and rights thereunder, shall apply to the associations organized hereunder, except where such provisions are in conflict with or inconsistent with the express provisions of sections 21-1401 to 21-1414; *Provided,* that wherever such general corporation laws require an affirmative vote of a specified percentage of stockholders to authorize action by the corporation, such percentage for a nonstock cooperative association shall be that percentage of the votes cast on the matter at the members' meeting at which the same shall be voted upon. Any provision of law which is in conflict therewith shall not be construed as applying to any association herein provided for.

Source: Laws 1925, c. 80, § 14, p. 253; C.S.1929, § 24-1414; R.S.1943, § 21-1414; Laws 1977, LB 155, § 3.

ARTICLE 15

HOSPITAL SERVICE CORPORATIONS

Section
21-1501. Repealed. Laws 1959, c. 80, § 93.
21-1502. Repealed. Laws 1959, c. 80, § 93.
21-1503. Repealed. Laws 1959, c. 80, § 93.
21-1504. Repealed. Laws 1959, c. 80, § 93.
21-1505. Repealed. Laws 1959, c. 80, § 93.
21-1506. Repealed. Laws 1959, c. 80, § 93.
21-1507. Repealed. Laws 1959, c. 80, § 93.
21-1508. Repealed. Laws 1959, c. 80, § 93.
21-1509. Repealed. Laws 1989, LB 92, § 278.
21-1509.01. Repealed. Laws 1989, LB 92, § 278.
21-1510. Repealed. Laws 1989, LB 92, § 278.
21-1511. Repealed. Laws 1972, LB 1156, § 1.
21-1512. Repealed. Laws 1989, LB 92, § 278.
21-1513. Repealed. Laws 1989, LB 92, § 278.
21-1514. Repealed. Laws 1989, LB 92, § 278.
21-1515. Repealed. Laws 1989, LB 92, § 278.
21-1516. Repealed. Laws 1989, LB 92, § 278.
21-1517. Repealed. Laws 1957, c. 57, § 2.
21-1518. Repealed. Laws 1989, LB 92, § 278.
21-1519. Repealed. Laws 1989, LB 92, § 278.
21-1520. Repealed. Laws 1989, LB 92, § 278.
21-1521. Repealed. Laws 1989, LB 92, § 278.
21-1522. Repealed. Laws 1951, c. 41, § 3.
21-1523. Repealed. Laws 1959, c. 80, § 93.
21-1524. Repealed. Laws 1959, c. 80, § 93.

Section
21-1525. Repealed. Laws 1959, c. 80, § 93.
21-1526. Repealed. Laws 1959, c. 80, § 93.
21-1527. Repealed. Laws 1959, c. 80, § 93.
21-1528. Repealed. Laws 1959, c. 80, § 93.
21-1529. Repealed. Laws 1959, c. 264, § 1.

21-1501 Repealed. Laws 1959, c. 80, § 93.

21-1502 Repealed. Laws 1959, c. 80, § 93

21-1503 Repealed. Laws 1959, c. 80, § 93.

21-1504 Repealed. Laws 1959, c. 80, § 93.

21-1505 Repealed. Laws 1959, c. 80, § 93.

21-1506 Repealed. Laws 1959, c. 80, § 93.

21-1507 Repealed. Laws 1959, c. 80, § 93.

21-1508 Repealed. Laws 1959, c. 80, § 93.

21-1509 Repealed. Laws 1989, LB 92, § 278.

21-1509.01 Repealed. Laws 1989, LB 92, § 278.

21-1510 Repealed. Laws 1989, LB 92, § 278.

21-1511 Repealed. Laws 1972, LB 1156, § 1.

21-1512 Repealed. Laws 1989, LB 92, § 278.

21-1513 Repealed. Laws 1989, LB 92, § 278.

21-1514 Repealed. Laws 1989, LB 92, § 278.

21-1515 Repealed. Laws 1989, LB 92, § 278.

21-1516 Repealed. Laws 1989, LB 92, § 278.

21-1517 Repealed. Laws 1957, c. 57, § 2.

21-1518 Repealed. Laws 1989, LB 92, § 278.

21-1519 Repealed. Laws 1989, LB 92, § 278.

21-1520 Repealed. Laws 1989, LB 92, § 278.

21-1521 Repealed. Laws 1989, LB 92, § 278.

21-1522 Repealed. Laws 1951, c. 41, § 3.

21-1523 Repealed. Laws 1959, c. 80, § 93.

21-1524 Repealed. Laws 1959, c. 80, § 93.

21-1525 Repealed. Laws 1959, c. 80, § 93.

21-1526 Repealed. Laws 1959, c. 80, § 93.

21-1527 Repealed. Laws 1959, c. 80, § 93.

21-1528 Repealed. Laws 1959, c. 80, § 93.

21-1529 Repealed. Laws 1959, c. 264, § 1.

ARTICLE 16
UNION DEPOT COMPANIES

Section
21-1601. Repealed. Laws 1961, c. 80, § 1.
21-1602. Repealed. Laws 1961, c. 80, § 1.
21-1603. Repealed. Laws 1961, c. 80, § 1.
21-1604. Repealed. Laws 1961, c. 80, § 1.
21-1605. Repealed. Laws 1961, c. 80, § 1.

21-1601 Repealed. Laws 1961, c. 80, § 1.

21-1602 Repealed. Laws 1961, c. 80, § 1.

21-1603 Repealed. Laws 1961, c. 80, § 1.

21-1604 Repealed. Laws 1961, c. 80, § 1.

21-1605 Repealed. Laws 1961, c. 80, § 1.

ARTICLE 17
CREDIT UNIONS

Cross References

Confidential information, disclosure provisions, see section 8-1401.
Penalty, false statement or book entry, destruction of records, see section 28-612.

(a) CREDIT UNION ACT

Section
21-1701. Act, how cited.
21-1702. Definitions, where found.
21-1703. Capital, defined.
21-1704. Corporate central credit union, defined.
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21-1726. Forms of articles and bylaws.

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21-17,137. Repealed. Laws 2003, LB 131, § 40.
21-17,138. Repealed. Laws 2003, LB 131, § 40.
21-17,139. Repealed. Laws 2003, LB 131, § 40.
21-17,140. Repealed. Laws 2003, LB 131, § 40.
21-17,141. Repealed. Laws 2003, LB 131, § 40.
21-17,142. Repealed. Laws 2003, LB 131, § 40.
21-17,143. Repealed. Laws 2003, LB 131, § 40.
21-17,144. Repealed. Laws 2003, LB 131, § 40.
21-17,145. Repealed. Laws 2003, LB 131, § 40.

(a) CREDIT UNION ACT

21-1701 Act, how cited.

Sections 21-1701 to 21-17,116 shall be known and may be cited as the Credit Union Act.

Source: Laws 1996, LB 948, § 1; Laws 2000, LB 932, § 23; Laws 2002, LB 957, § 15.

21-1702 Definitions, where found.

For purposes of the Credit Union Act, the definitions found in sections 21-1703 to 21-1722 shall be used.

Source: Laws 1996, LB 948, § 2.

21-1703 Capital, defined.

Capital shall mean share accounts, membership shares, reserve accounts, and undivided earnings.

Source: Laws 1996, LB 948, § 3.

21-1704 Corporate central credit union, defined.

Corporate central credit union shall mean a credit union the members of which consist primarily of other credit unions.

Source: Laws 1996, LB 948, § 4.

21-1705 Credit union, defined.

Credit union shall mean a cooperative, nonprofit corporation organized under the Credit Union Act for purposes of educating and encouraging its members in the concept of thrift, creating a source of credit for provident and productive purposes, and carrying on such collateral activities as are set forth in the act.

Source: Laws 1996, LB 948, § 5.

21-1706 Department, defined.

Department shall mean the Department of Banking and Finance.

Source: Laws 1996, LB 948, § 6.

21-1707 Director, defined.

Director shall mean the Director of Banking and Finance.

Source: Laws 1996, LB 948, § 7.

21-1708 Employee, defined.

Employee shall mean a person who works full-time or part-time for and is compensated by a credit union.

Source: Laws 1996, LB 948, § 8.

21-1709 Fixed asset, defined.

Fixed asset shall mean a structure, land, furniture, fixture, or equipment, including computer hardware and software and heating and cooling equipment, affixed to premises.

Source: Laws 1996, LB 948, § 9.

21-1710 Immediate family, defined.

Immediate family shall include any person related to a member by blood or marriage, including foster and adopted children.

Source: Laws 1996, LB 948, § 10.

21-1711 Individual, defined.

Individual shall mean a natural person.

Source: Laws 1996, LB 948, § 11.

21-1712 Insolvent, defined.

Insolvent shall mean a condition in which (1) the actual cash market value of the assets of a credit union is insufficient to pay its liabilities to its members, (2) a credit union is unable to meet the demands of its creditors in the usual and customary manner, (3) a credit union, after demand in writing by the director, fails to make good any deficiency in its reserves as required by law, or (4) a credit union, after written demand by the director, fails to make good an impairment of its capital or surplus.

Source: Laws 1996, LB 948, § 12.

21-1713 Line of credit, defined.

Line of credit shall mean a loan in which amounts are advanced to the borrower upon his or her request from time to time, pursuant to a preexisting contract and conditional or unconditional credit approval, and in which principal amounts repaid automatically replenish the funds available under the contract.

Source: Laws 1996, LB 948, § 13.

21-1714 Loan, defined.

Loan shall mean any extension of credit pursuant to a contract.

Source: Laws 1996, LB 948, § 14.

21-1715 Membership officer, defined.

Membership officer shall mean any member appointed by the board of directors of a credit union whose primary function is to act on applications for membership under the conditions the board and bylaws have prescribed.

Source: Laws 1996, LB 948, § 15.

21-1716 Membership shares, defined.

Membership shares shall mean a balance held by a credit union and established by a member in accordance with standards specified by the credit union. Each member may own only one membership share. Ownership of a membership share shall represent an interest in the capital of the credit union upon dissolution or conversion to another type of institution.

Source: Laws 1996, LB 948, § 16.

21-1717 Official, defined.

Official shall mean a member of the board of directors of a credit union, an officer of a credit union, a member of the credit committee of a credit union, if any, or a member of the supervisory committee of a credit union.

Source: Laws 1996, LB 948, § 17.

21-1718 Organization, defined.

Organization shall mean any corporation, association, limited liability company, partnership, society, firm, syndicate, trust, or other legal entity.

Source: Laws 1996, LB 948, § 18.

21-1719 Person, defined.

Person shall mean an individual, partnership, limited liability company, corporation, association, cooperative organization, or any other legal entity treated as a person under the laws of this state.

Source: Laws 1996, LB 948, § 19.

21-1720 Reserves, defined.

Reserves shall mean an allocation of retained income and shall include regular and special reserves, except for any allowance for loan or investment losses.

Source: Laws 1996, LB 948, § 20.

21-1721 Risk assets, defined.

Risk assets shall mean all assets except the following:

(1) Cash on hand;

(2) Deposits or shares in federally insured or state-insured banks, savings and loan associations, and credit unions that have a remaining maturity of five years or less;

(3) Assets that have a remaining maturity of five years or less and which are insured by, fully guaranteed as to principal and interest by, or due from the United States Government, its agencies, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association. Collateralized mortgage obligations that are comprised of government-guaranteed mortgage loans shall be included in this asset category;

(4) Loans to other credit unions that have a remaining maturity of five years or less;

(5) Student loans insured under Title IV, Part B, of the federal Higher Education Act of 1965, 20 U.S.C. 1071 et seq. or similar state insurance programs that have a remaining maturity of five years or less;

(6) Loans that have a remaining maturity of five years or less and are fully insured or guaranteed by the federal government, a state government, or any agency thereof;

(7) Share accounts or deposit accounts in a corporate central credit union that have a remaining maturity of five years or less or, if the maturity is greater than five years, an asset that is being carried on the credit union's records at the lower of cost or market value or is being marked to market value monthly;

(8) Common trust investments, including mutual funds, which deal exclusively in investments authorized by the Credit Union Act or the Federal Credit Union Act that are either carried on the credit union's records at the lower of cost or market value or are being marked to market value monthly;

(9) Prepaid expenses;

(10) Accrued interest on nonrisk investments;

(11) Loans fully secured by a pledge of share accounts in the lending credit union which are equal to and maintained to at least the amount of each loan outstanding;

(12) Loans which are purchased from liquidating credit unions and guaranteed by the National Credit Union Administration;

(13) National Credit Union Share Insurance Fund Guaranty Accounts established by the National Credit Union Administration pursuant to 12 U.S.C. 1783 of the Federal Credit Union Act;

(14) Investments in shares of the National Credit Union Administration Central Liquidity Facility, 12 U.S.C. 1795;

(15) Assets included in subdivisions (2) through (7) of this section with maturities greater than five years if each asset is being carried on the credit union's records at the lower of cost or market value or is being marked to market value monthly;

(16) Assets included in subdivisions (2) through (7) of this section with remaining maturities greater than five years if each asset meets the following criteria, irrespective of whether or not each asset is being carried on the credit union's records at the lower of cost or market value or is being marked to market value monthly:

(a) The interest rate of the asset is reset at least annually;

(b) The interest rate of the asset is less than the maximum allowable interest rate for the asset on the date of the required reserve transfer; and

(c) The interest rate of the asset varies directly, not inversely, with the index upon which it is based and is not reset as a multiple of the change in the related index;

(17) Fixed assets; and

(18) A deposit in the National Credit Union Share Insurance Fund, 12 U.S.C. 1783, representing a federally insured credit union's capitalization account balance of one percent of insured shares.

Source: Laws 1996, LB 948, § 21.

21-1722 Share account, defined.

Share account shall mean a balance held by a credit union and established by a member in accordance with standards specified by the credit union, including balances designated as shares, share certificates, share draft accounts, or other names. Share account shall not include membership shares.

Source: Laws 1996, LB 948, § 22.

21-1723 Ownership of a share account; rights.

Ownership of a share account shall confer membership and voting rights and shall represent an interest in the capital of the credit union upon dissolution or conversion to another type of institution.

Source: Laws 1996, LB 948, § 23.

21-1724 Organization; procedure; hearing.

(1) Any nine or more individuals residing in the State of Nebraska who are nineteen years of age or older and who have a common bond pursuant to section 21-1743 may apply to the department on forms prescribed by the department for permission to organize a credit union and to become charter members and subscribers of the credit union.

(2) The subscribers shall execute in duplicate articles of association and shall agree to the terms of the articles of association. The terms shall state:

(a) The name, which shall include the words ''credit union'' and shall not be the same as the name of any other credit union in this state, whether or not organized under the Credit Union Act, and the location where the proposed credit union will have its principal place of business;

(b) The names and addresses of the subscribers to the articles of association and the number of shares subscribed by each;

(c) The par value of the shares of the credit union which shall be established by its board of directors. A credit union may have more than one class of shares;

(d) The common bond of members of the credit union; and

(e) That the existence of the credit union shall be perpetual.

(3) The subscribers shall prepare and adopt bylaws for the governance of the credit union. The bylaws shall be consistent with the Credit Union Act and shall be executed in duplicate.

(4) The subscribers shall select at least five qualified individuals to serve on the board of directors of the credit union, at least three qualified individuals to serve on the supervisory committee of the credit union, and at least three qualified individuals to serve on the credit committee of the credit union, if any. Such individuals shall execute a signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later.

(5) The articles of association and the bylaws, both executed in duplicate, shall be forwarded by the subscribers along with the required fee, if any, to the director, as an application for a certificate of approval.

(6) The director shall act upon the application within one hundred twenty calendar days after receipt of the articles of association and the bylaws to determine whether the articles of association conform with this section and

whether or not the character of the applicants and the conditions existing are favorable for the success of the credit union.

(7) The director shall notify an applicant of his or her decision on the application. If the decision is favorable, the director shall issue a certificate of approval to the credit union. The certificate of approval shall be attached to the duplicate articles of association and returned, with the duplicate bylaws, to such subscribers.

(8) The subscribers shall file the certificate of approval with the articles of association attached in the office of the county clerk of the county in which the credit union is to locate its principal place of business. The county clerk shall accept and record the documents if they are accompanied by the proper fee and, after indexing, forward to the department proper documentation that the certificate of approval with the articles of association attached have been properly filed and recorded. When the documents are so recorded, the credit union shall be organized in accordance with the Credit Union Act and may begin transacting business.

(9) If the director's decision on the application is unfavorable, he or she shall notify the subscribers of the reasons for the decision. The subscribers may then request a public hearing if no such hearing was held at the time the application was submitted for consideration.

(10) The request for a public hearing shall be made in writing to the director not more than thirty calendar days after his or her decision. The director, within ten calendar days after receipt of a request for a hearing, shall set a date for the hearing at a time and place convenient to the director and the subscribers, but no longer than sixty calendar days after receipt of such request. The director may request a stenographic record of the hearing.

Source: Laws 1996, LB 948, § 24.

21-1725 Existing credit unions; organization; procedure.

Any credit union now existing which was organized under Chapter 21, article 17, shall become organized under the Credit Union Act by filing with the department, within sixty days after October 1, 1996, a writing accepting all of the provisions of the act and declaring its intention to operate under those provisions.

Source: Laws 1996, LB 948, § 25.

21-1725.01 New credit union; branch credit union; application; procedure; hearing.

(1) Upon receiving an application to establish a new credit union, a public hearing shall be held on each application. Notice of the filing of the application shall be published by the department for three weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the credit union. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after filing the application unless the applicant agrees to a later date. Notice of the filing of the application shall be sent by the department to all financial institutions located in the county where the applicant proposes to operate.

(2) When application is made to establish a branch of a credit union, the director shall hold a hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant credit union warrants a hearing. If the director determines that the condition of the credit union does not warrant a hearing, the director shall (a) publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed branch would be located and (b) give notice of such application to all financial institutions located within the county where the proposed credit union branch would be located and to such other interested parties as the director may determine. If the director receives any substantive objection to the proposed credit union branch within fifteen days after publication of such notice, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subsection shall be published for two consecutive weeks in a newspaper of general circulation in the county where the proposed branch would be located. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after the filing of the application unless the applicant agrees to a later date.

(3) The director may, in his or her discretion, hold a public hearing on amendments to a credit union's articles of association or bylaws which are brought before the department.

(4) The director shall send any notice to financial institutions required by this section by certified mail or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail.

(5) The expense of any publication and certified mailing required by this section shall be paid by the applicant.

Source: Laws 2002, LB 957, § 17; Laws 2003, LB 217, § 30; Laws 2005, LB 533, § 30.

21-1726 Forms of articles and bylaws.

In order to simplify the organization of credit unions, the director shall cause to be prepared an approved form of articles of association and a suggested form of bylaws, consistent with the Credit Union Act, which may be used by credit union subscribers as a guide. Upon written application of any nine individuals residing in the state, the director shall supply such individuals, without charge, one approved form of the articles of association and one suggested form of bylaws.

Source: Laws 1996, LB 948, § 26.

21-1727 Articles and bylaws; amendments.

(1) The articles of association may be amended at any regular or special meeting at which a quorum of the members as provided in the bylaws is present if the notice of the meeting contained a copy of the proposed amendment. An amendment shall not become effective until it has been filed with and approved in writing by the department and the fee prescribed by section 8-602 has been paid. One copy of an amendment or amendments to the articles of association shall be filed in the office of the county clerk of the county where the credit union has its principal place of business, for which a fee of fifty cents shall be charged.

(2) Except as provided in subsection (3) of this section, the bylaws may be amended at any regular or special meeting of the board of directors by a majority of the total directors if the notice of the meeting contained a copy of the proposed amendment. An amendment shall not become effective until it has been filed with and approved in writing by the department and the fee prescribed by section 8-602 has been paid.

(3)(a) The board of directors may adopt by resolution standard bylaw amendments adopted and promulgated by the department from time to time. The standard amendments may include two or more alternatives that the board of directors may elect. The standard bylaw amendments may also include companion amendments which shall be adopted as a unit.

(b) The board of directors may adopt any standard bylaw amendment without prior approval of the department as long as the standard bylaw amendment is adopted without any change in wording and a Certificate of Resolution adopting such amendment is submitted to the department containing the adopted language within ten days after the adoption of such amendment. Certificate of Resolution forms shall be furnished by the department upon request. The fee prescribed by section 8-602 shall not be charged when standard bylaw amendments are adopted.

Source: Laws 1996, LB 948, § 27.

21-1728 Use of name exclusive; violation; penalty; injunction.

(1) No person, corporation, limited liability company, partnership, or association other than a credit union organized under the Credit Union Act or the Federal Credit Union Act or the voluntary association of credit unions, shall use a name or title containing the phrase ''credit union'' or any derivation thereof, represent itself as a credit union, or conduct business as a credit union.

(2) Any violation of this section shall be a Class V misdemeanor.

(3) The director may petition a court of competent jurisdiction to enjoin any violation of this section.

Source: Laws 1996, LB 948, § 28.

21-1729 Place of business.

(1) A credit union may change its principal place of business within this state upon written notice to, and approval by, the director.

(2) A credit union may maintain automatic teller machines and point-of-sale terminals at locations other than its principal office pursuant to section 8-157.01.

Source: Laws 1996, LB 948, § 29; Laws 1999, LB 396, § 20.

21-1730 Fiscal year.

The fiscal year of each credit union organized under the Credit Union Act shall end on December 31.

Source: Laws 1996, LB 948, § 30.

21-1731 Department; general powers.

The department shall have general supervision and control of credit unions as provided by the Credit Union Act, section 8-102, and any other applicable laws of this state.

Source: Laws 1996, LB 948, § 32.

21-1732 Director; powers and duties.

(1) The director may adopt and promulgate rules and regulations to carry out the Credit Union Act.

(2) The director may issue a cease and desist order when (a) the director has determined from competent and substantial evidence that a credit union is engaged in or has engaged in an unsafe or unsound practice or is violating or has violated a material provision of any law, rule, regulation, or any condition imposed in writing by the director or any written agreement made with the director or (b) the director has reasonable cause to believe a credit union is about to engage in an unsafe or unsound practice or is violating or has violated a material provision of any law, rule, regulation, or any condition imposed in writing by the director or any written agreement made with the director or the director has reasonable cause to believe a credit union is about to violate a material provision of any law, rule, regulation, or any condition imposed in writing by the director or any written agreement made with the director.

(3) The director may restrict the making of loans by a credit union and the withdrawal from and the deposit to share accounts of a credit union when he or she finds circumstances that make such restriction necessary for the protection of the shareholders.

(4) The director may suspend from office and prohibit from further participation in any manner in the conduct of the affairs of a credit union any official who has committed any violation of a law, rule, regulation, or cease and desist order, who has engaged in or participated in any unsafe or unsound practice in connection with a credit union, or who has committed or engaged in any act, omission, or practice which constitutes a breach of that person's fiduciary duty as an official, when the director has determined that such action or actions have resulted or will result in substantial financial loss or other damage that will seriously prejudice the interest of the credit union members.

(5) The director shall consider applications brought before the department pursuant to section 21-1725.01.

(6) The director may subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine any person under oath in connection with any subject relating to a duty upon or a power vested in the director.

Source: Laws 1996, LB 948, § 33; Laws 2002, LB 957, § 16.

21-1733 Order; appeal; procedure.

Any order or decision of the director may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1996, LB 948, § 31.

Cross References

Administrative Procedure Act, see section 84-920.

21-1734 Corrective measures; receivership proceedings.

(1) If it appears that any credit union is bankrupt or insolvent, that it has willfully violated the Credit Union Act, or that it is operating in an unsafe or unsound manner, the director may require such corrective measures in accordance with sections 8-1,134 to 8-1,139 as he or she may deem necessary or take possession of the property and business of such credit union and retain possession thereof until such time as he or she determines either to permit the credit union to resume business or to order its dissolution. In the event the director orders its dissolution, the credit union shall be liquidated in receivership proceedings in the same manner, as nearly as may be possible, as provided by the laws governing the liquidation of state banks.

(2) Pursuant to section 21-1735, the director may appoint the National Credit Union Administration Board as receiver or liquidator of the assets and liabilities of any credit union in the possession of the director. The appointment shall be subject to the approval of the district court of the judicial district in which the credit union has its principal place of business.

Source: Laws 1996, LB 948, § 34.

Cross References

Liquidation of state banks, see sections 8-194 to 8-1,118.

21-1735 National Credit Union Administration Board; appointment as receiver or liquidator.

(1) The National Credit Union Administration Board, as created by 12 U.S.C. 1752(a), shall be authorized to accept the appointment by the director as receiver or liquidator, without bond, of any credit union in the possession of the department and whose shares are to any extent insured by the National Credit Union Administration under section 201 et seq. of the Federal Credit Union Act, 12 U.S.C. 1781 et seq. Any credit union which fails to maintain such insurance may be voluntarily dissolved or liquidated by the board of directors of such credit union or may be taken in possession by the director and involuntarily liquidated as in the case of insolvency.

(2) Whenever the director takes possession of a credit union subject to the jurisdiction of the department, the director may tender to the National Credit Union Administration Board the appointment as receiver or liquidator of such credit union. If the board accepts such appointment, it shall have and possess all the powers and privileges provided by the laws of this state with respect to a receiver or liquidator of a credit union and its shareholders and other creditors and shall be subject to all the duties of such receiver or liquidator, except insofar as such powers, privileges, or duties are in conflict with the Federal Credit Union Act, 12 U.S.C. 1781 et seq.

(3) Whenever the National Credit Union Administration Board has been appointed as receiver or liquidator of a credit union pursuant to this section, it shall be subrogated to all the rights and interests against such credit union of all the shareholders or other creditors of the credit union to the full extent of such rights and interests in the credit union. The rights of shareholders or other creditors of the credit union shall be determined in accordance with the laws of this state.

(4) Upon acceptance by the National Credit Union Administration Board of the appointment as receiver or liquidator of a credit union from the director

and subject to the approval of the district court of the judicial district in which the credit union has its principal place of business, the possession of and title to all the assets, business, and property of every kind and nature of the credit union shall pass to and vest in the board without the execution of any instrument of conveyance, assignment, transfer, or endorsement.

(5) In addition to its powers and duties as receiver or liquidator, the National Credit Union Administration Board shall have the right and authority upon the order of any court of record of competent jurisdiction to enforce the individual liability of the members of the board of directors of any credit union.

Source: Laws 1996, LB 948, § 35.

21-1736 Examinations.

(1) The director shall examine or cause to be examined each credit union as often as deemed necessary. Each credit union and all of its officials and agents shall give the director or any of the examiners appointed by him or her free and full access to all books, papers, securities, and other sources of information relative to such credit union. For purposes of the examination, the director may subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

(2) The department shall forward a report of the examination to the chairperson of the board of directors within ninety calendar days after completion. The report shall contain comments relative to the management of the affairs of the credit union and the general condition of its assets. Within ninety calendar days after the receipt of such report, the members of the board of directors and the members of the supervisory and credit committees shall meet to consider the matters contained in the report.

(3) The director may require special examinations of and special financial reports from a credit union or a credit union service organization in which a credit union loans, invests, or delegates substantially all managerial duties and responsibilities when he or she determines that such examinations and reports are necessary to enable the director to determine the safety of a credit union's operations or its solvency. The cost to the department of such special examinations shall be borne by the credit union being examined.

(4) The director may accept, in lieu of any examination of a credit union authorized by the laws of this state, a report of an examination made of a credit union by the National Credit Union Administration or may examine any such credit union jointly with such federal agency. The director may make available to the National Credit Union Administration copies of reports of any examination or any information furnished to or obtained by the director in any examination.

Source: Laws 1996, LB 948, § 36; Laws 2002, LB 957, § 18.

21-1737 Records.

(1) A credit union shall maintain all books, records, accounting systems, and procedures in accordance with the rules and regulations as the director from time to time may prescribe.

(2) Credit unions shall preserve or keep their records or files, or photographic or microphotographic copies thereof, for a period of not less than six years after the first day of January of the year following the time of the making or

filing of such records or files except as provided in subsection (3) of this section.

(3)(a) Ledger sheets showing unpaid balances in favor of members of credit unions shall not be destroyed unless the credit union has remitted such unpaid balances to the State Treasurer in accordance with the Uniform Disposition of Unclaimed Property Act. Credit unions shall retain a record of every such remittance for ten years following the date of such remittance.

(b) Corporate records that relate to the corporation or the corporate existence of the credit union shall not be destroyed.

(4) A credit union shall not be liable for destroying records after the expiration of the record retention period provided in this section except for records involved in an official investigation or examination about which the credit union has received notice.

(5) A reproduction of any credit union records shall be admissible as evidence of transactions with the credit union as provided in section 25-12,112.

Source: Laws 1996, LB 948, § 37; Laws 1999, LB 396, § 21.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

21-1738 Reports.

A credit union shall report to the department annually on or before the first day of February on forms supplied by the department for that purpose. The chairperson of the board of directors and the president of the credit union shall sign the report or reports certifying that such report or reports are correct according to their best knowledge and belief. The director may require additional reports as he or she deems appropriate and necessary. An additional fee of fifty dollars shall be levied for each day a credit union fails to provide a required report unless the delay is excused for cause.

Source: Laws 1996, LB 948, § 38; Laws 1997, LB 137, § 11.

21-1739 Repealed. Laws 2007, LB 124, § 78.

21-1740 Credit union; powers.

(1) A credit union shall have all the powers specified in this section and all the powers specified by any other provision of the Credit Union Act.

(2) A credit union may make contracts.

(3) A credit union may sue and be sued.

(4) A credit union may adopt a seal and alter the same.

(5) A credit union may purchase, lease, or otherwise acquire and hold tangible personal property necessary or incidental to its operations. A credit union shall depreciate or appreciate such personal property in the manner and at the rates the director may prescribe by rule or order from time to time.

(6) A credit union may, in whole or part, sell, lease, assign, pledge, hypothecate, or otherwise dispose of its tangible personal property, including such property obtained as a result of defaults under obligations owing to it.

(7) A credit union may incur and pay necessary and incidental operating expenses.

(8) A credit union may receive, from a member, from another credit union, from an officer, or from an employee, payments representing equity on (a) share accounts which may be issued at varying dividend rates, (b) share account certificates which may be issued at varying dividend rates and maturities, and (c) share draft accounts, subject to such terms, rates, and conditions as may be established by the board of directors, within limitations prescribed by the department. A credit union shall provide for the transfer and withdrawal of funds from accounts by the means and through the payment system that the board of directors determines best serves the convenience and needs of members.

(9) A credit union may lend its funds to its members as provided in the Credit Union Act.

(10) A credit union may borrow from any source in an amount not exceeding fifty percent of its capital and deposits.

(11) A credit union may provide debt counseling and other financial counseling services to its members.

(12) A credit union may, in whole or in part, discount, sell, assign, pledge, hypothecate, or otherwise dispose of its intangible personal property. The approval of the director shall be required before a credit union may discount, sell, assign, pledge, hypothecate, or otherwise dispose of twenty percent or more of its intangible personal property within one month unless the credit union is in liquidation.

(13) A credit union may purchase any of the assets of another credit union or assume any of the liabilities of another credit union with the approval of the director. A credit union may also purchase any of the assets of a credit union which is in liquidation or receivership.

(14) A credit union may make deposits in or loans to banks, savings banks, savings and loan associations, and trust companies, purchase shares in mutual savings and loan associations, and make deposits in or loans to or purchase shares of other credit unions, including corporate central credit unions, if such institutions are either insured by an agency of the federal government or are eligible under the laws of the United States to apply for such insurance and invest funds as otherwise provided in sections 21-17,100 to 21-17,102.

(15) A credit union may make deposits in, make loans to, or purchase shares of any federal reserve bank or central liquidity facility established under state or federal law.

(16) A credit union may hold membership in associations and organizations controlled by or fostering the interests of credit unions, including a central liquidity facility organized under state or federal law.

(17) A credit union may engage in activities and programs of the federal government, any state, or any agency or political subdivision thereof when approved by the board of directors and not inconsistent with the Credit Union Act.

(18) A credit union may receive funds either as shares or deposits from other credit unions.

(19) A credit union may lease tangible personal property to its members if the credit union acquires no interest in the property prior to its selection by the member.

(20) A credit union may, in whole or in part, purchase, sell, pledge, discount, or otherwise acquire and dispose of obligations of its members in accordance with the rules and regulations promulgated by the director. This subsection shall not apply to participation loans originated pursuant to section 21-1794.

(21) A credit union may, at its own expense, purchase insurance for its members in connection with its members' shares, loans, and other accounts.

(22) A credit union may establish, operate, participate in, and hold membership in systems that allow the transfer of credit union funds and funds of its members by electronic or other means, including, but not limited to, clearinghouse associations, data processing and other electronic networks, the federal reserve system, or any other government payment or liquidity program.

(23) A credit union may issue credit cards and debit cards to allow members to obtain access to their shares and extensions of credit if such issuance is not inconsistent with the rules of the department. The department may by rule or regulation allow the use of devices similar to credit cards and debit cards to allow members to access their shares and extensions of credit.

(24) A credit union may service the loans it sells, in whole or in part, to a third party.

(25) In addition to loan and investment powers otherwise authorized by the Credit Union Act, a credit union may organize, invest in, and make loans to corporations or other organizations (a) which engage in activities incidental to the conduct of a credit union or in activities which further or facilitate the purposes of a credit union or (b) which furnish services to credit unions. The director shall determine by rule, regulation, or order the activities and services which fall within the meaning of this subsection. A credit union shall notify the director of any such investment or loan if it would cause the aggregate of such investments and loans to exceed two percent of the credit union's capital and deposits. Such investments and loans may not, in the aggregate, exceed five percent of the capital and deposits of the credit union.

(26) A credit union may purchase, lease, construct, or otherwise acquire and hold land and buildings for the purpose of providing adequate facilities for the transaction of present and potential future business. A credit union may use such land and buildings for the principal office functions, service facilities, and any other activity in which it engages. A credit union may rent excess space as a source of income. A credit union shall depreciate or appreciate such buildings owned by it in the manner and at the rates the director may prescribe by rule, regulation, or order from time to time. A credit union's investment and contractual obligations, direct, indirect, or contingent, in land and buildings under this subsection shall not exceed seven percent of its capital and deposits without prior approval of the director. This subsection shall not affect the legality of investments in land and buildings made prior to October 1, 1996.

(27) A credit union may, in whole or in part, sell, lease, assign, mortgage, pledge, hypothecate, or otherwise dispose of its land and buildings, including land and buildings obtained as a result of defaults under obligations owing to it.

Source: Laws 1996, LB 948, § 40; Laws 1997, LB 137, § 13.

21-1741 Safety deposit box service.

(1) A credit union, by action of its board of directors, may, to the same extent as a bank organized under the laws of this state, operate a safety deposit box service for its members pursuant to sections 8-501 and 8-502.

(2) Before granting approval for a credit union to operate a safety deposit box service, the director shall consider the reserve position of the credit union, the performance qualifications of its management, the rules of the credit union for the operation of its safety deposit box service, security measures, bonding and insurance, and the general safe and sound condition of the credit union.

(3) A credit union shall not spend more than twenty-five thousand dollars or an amount equal to one percent of its capital, whichever is greater, on the capital expenditures of its safety deposit box service.

Source: Laws 1996, LB 948, § 41; Laws 1997, LB 137, § 14.

21-1742 Incidental powers.

A credit union may exercise all incidental powers that are suitable and necessary to enable it to carry out its purpose.

Source: Laws 1996, LB 948, § 42.

21-1743 Membership; requirements.

(1) The membership of a credit union shall consist of the subscribers to the articles of association and such persons, societies, associations, partnerships, and corporations as have been duly elected, members who have subscribed for one or more shares, have paid for such share or shares in whole or in part, have paid the entrance fee provided in the bylaws, and have complied with such other requirements as the articles of association and bylaws may specify. For purposes of obtaining a loan and to vote at membership meetings, a member, to be in good standing, must own at least one fully paid share. Credit union organization shall be limited to groups of both large and small membership having a common bond of occupation or association, including religious, social, or educational groups, employees of a common employer, or members of a fraternal, religious, labor, farm, or educational organization and the members of the immediate families of such persons.

(2) A person having been duly admitted to membership, having complied with the Credit Union Act, the articles of association, and the bylaws, having paid the entrance fee, and having paid for at least one share, shall retain full rights and privileges of membership for life unless that membership is terminated by withdrawal or expulsion in the manner provided by the act.

Source: Laws 1996, LB 948, § 43.

21-1744 Fees.

A credit union may charge an entrance fee as determined by its board of directors. A credit union may also charge periodic membership fees as determined by its board of directors.

Source: Laws 1996, LB 948, § 44.

21-1745 Retention of membership; when.

Members who cease to be eligible or who leave the field of membership may be permitted to retain their membership in the credit union under reasonable

standards established by the board of directors unless terminated by withdrawal or expulsion.

Source: Laws 1996, LB 948, § 45.

21-1746 Liability of members.

The members of the credit union shall not be personally or individually liable for the payment of its debts solely by virtue of holding membership in the credit union.

Source: Laws 1996, LB 948, § 46.

21-1747 Expulsion of members.

(1) Any member may be expelled by a two-thirds vote of the members present at any regular meeting or a special meeting called to consider the matter, but only after an opportunity has been given to the member to be heard.

(2) The board of directors may expel a member pursuant to a written policy adopted by it. All members shall be given written notice of the terms of any such policy. Any person expelled by the board shall have the right, within thirty calendar days, to request a hearing before it to reconsider the expulsion. The board of directors shall schedule the requested hearing within sixty calendar days after the request.

Source: Laws 1996, LB 948, § 47.

21-1748 Termination of members.

(1) A member may voluntarily terminate his or her membership at any time in the way and manner provided in the bylaws.

(2) Termination of membership shall not serve to relieve a person from any liability to the credit union nor shall it be the basis for accelerating any obligation not in default. A terminated member shall be paid all sums in any of his or her share accounts without maturity dates within thirty calendar days. Sums in any share account with a maturity date shall not be paid prior to maturity unless the member specifically requests the funds. The credit union shall not be required to pay any funds from a share account to the extent that they secure loans and other obligations owing to the credit union.

Source: Laws 1996, LB 948, § 48.

21-1749 Meetings.

The annual meeting and any special meeting of the members of the credit union shall be held in accordance with the bylaws. A special meeting of the members of the credit union may be called by the members or by the board of directors as provided in the bylaws. A credit union shall give notice of the time and place of any meeting of its members. In the case of a special meeting, the notice of such special meeting shall state the purpose of the meeting and the notice shall be given at least ten calendar days prior to the date of such special meeting.

Source: Laws 1996, LB 948, § 49.

21-1750 Voting rights.

(1) In any election or other membership vote, a member shall have only one vote, irrespective of the member's shareholdings. No member may vote by proxy, but a member other than an individual may vote through an agent designated for that purpose. Members may also vote by absentee ballot, mail, or other method if the bylaws of the credit union so provide.

(2) The board of directors may establish a minimum age of not greater than eighteen years as a qualification of eligibility to vote at meetings of members of the credit union, to hold office, or both.

(3) An organization having membership in the credit union may be represented and have its vote cast by one of its members or shareholders if such person has been so authorized by the organization's governing body.

(4) In elections when more than one office of the same type is being filled, the member shall have as many votes as there are offices being filled, but the member shall not cast more than one of these votes for any one candidate.

Source: Laws 1996, LB 948, § 50.

21-1751 Special meeting.

The supervisory committee, by a majority vote, may call a special meeting of the members of the credit union as provided in section 21-1749 to consider any violation of the Credit Union Act, any violation of the credit union's articles of association or bylaws, or any practice of the credit union deemed by the board of directors or supervisory committee to be unsafe or unauthorized.

Source: Laws 1996, LB 948, § 51.

21-1752 Central credit union; membership.

Credit unions organized and existing under the Credit Union Act may organize and have membership in a central credit union to which federal credit unions organized and operating in this state may belong and in which officials of both such credit unions may have membership. Organizations which are organized for the purpose of furthering credit union activities and their employees may have membership in such credit union. Small employee groups of fifty or more employees having a common bond of occupation whose probability of a successful operation would be limited because of the lack of adequate membership may join as a group in the central credit union and become members of that credit union with all the rights existing under the act.

Source: Laws 1996, LB 948, § 52.

21-1753 Central credit union; board of directors; credit committee.

At the first annual meeting of a central credit union, the members shall elect a board of directors of not less than nine members and a credit committee of not less than three members. No member of the board shall be a member of the credit committee and no credit union small employee group or affiliated organization shall be represented by more than one member on the board of directors, one member on the credit committee, and one member on the supervisory committee.

Source: Laws 1996, LB 948, § 53.

21-1754 Central credit union; board of directors; officers; supervisory committee.

At the first meeting of each fiscal year, the board of directors of a central credit union shall elect from its number a president, vice president, secretary, and treasurer. The offices of secretary and treasurer may be held by one person if the bylaws so provide. Officers shall hold office for one year or until their successors are chosen and duly qualified. At the first meeting of each fiscal year, the board of directors shall elect a supervisory committee of not less than five members, none of whom shall be a member of the board of directors or the credit committee.

Source: Laws 1996, LB 948, § 54.

21-1755 Central credit union; purchase of credit union.

With the approval of the department, a central credit union established under section 21-1752 may purchase the assets, assume the liabilities, and accept the membership of a credit union. Such purchase shall be approved by at least a two-thirds majority of the board of directors or the duly appointed trustees of the credit union to be sold.

Source: Laws 1996, LB 948, § 55; Laws 2002, LB 1094, § 11.

21-1756 Central credit union; loans and investments; limitations.

All member credit unions may borrow and invest up to an amount specified by the board of directors of the central credit union in accordance with the limitation of section 21-1791. The central credit union may purchase all or any part of a loan originated by a member credit union to one of its individual members, who does not need to be a member of the central credit union.

Source: Laws 1996, LB 948, § 56.

21-1757 Direction of credit union affairs.

The credit union shall be under the direction of a board of directors, a supervisory committee, and when provided by the bylaws, a credit committee.

Source: Laws 1996, LB 948, § 57.

21-1758 Election or appointment of board and committees.

(1) The board of directors of any credit union shall consist of an odd number of directors, at least five in number, to be elected by and from the members. Elections shall be held at the annual meeting or in such other manner as provided by the bylaws. All members of the board of directors shall hold office for such terms as provided by the bylaws, except that the terms of the board members shall be staggered so that an approximately equal number of terms expire each year.

(2) The supervisory committee shall have at least three members. The members shall be appointed by the board of directors or elected by the credit union members in such numbers and for terms as provided in the bylaws. No member of the supervisory committee shall be a director, officer, loan officer, credit committee member, or employee of the credit union while serving on the supervisory committee.

(3) If the bylaws provide for a credit committee, the committee shall have at least three members. The members shall be appointed by the board of directors or elected by the credit union members in such number and for such terms as provided in the bylaws. The credit committee shall have and perform the duties

as provided in the bylaws. If the bylaws do not provide for a credit committee, the board of directors shall have and perform the duties of the credit committee or delegate the duties as it so chooses.

Source: Laws 1996, LB 948, § 58.

21-1759 Record of board and committee membership.

The credit union shall file within thirty calendar days after the credit union's annual meeting, a record of the names and addresses of (1) the members of its board of directors, (2) the members of its supervisory and credit committees, and (3) its officers, as required by the department. Such filing shall be made on forms approved and provided by the department.

Source: Laws 1996, LB 948, § 59.

21-1760 Vacancies.

The board of directors shall fill any vacancies occurring on the board. An individual appointed to fill a vacancy on the board shall serve the remainder of the unexpired term, except that he or she shall cease to serve immediately if he or she replaced a director who was suspended or removed by the board or the supervisory committee and the credit union membership reversed such suspension or removal. Vacancies in the credit or supervisory committees shall be filled as provided in the bylaws.

Source: Laws 1996, LB 948, § 60.

21-1761 Compensation; expenses.

No officer, director, or committee member, jointly or severally, shall receive any compensation, directly or indirectly, for services performed for the credit union as such officer, director, or committee member, except that the treasurer may be compensated for his or her services in the amount, way, and manner provided for by the board of directors. However, providing life, health, accident, and similar insurance protection in reasonable amounts for a director or committee member shall not be considered compensation. Officials, while on credit union business, may be reimbursed for their necessary expenses incidental to the performance of credit union business.

Source: Laws 1996, LB 948, § 61; Laws 1999, LB 107, § 3.

21-1762 Conflicts of interest.

No official, agent, or employee of a credit union shall in any manner, directly or indirectly, participate in the deliberation upon the determination of any question affecting that person's pecuniary interest or the pecuniary interest of any corporation, partnership, or association, other than the credit union, in which that person is directly or indirectly interested.

Source: Laws 1996, LB 948, § 62.

21-1763 Indemnification.

A credit union may indemnify any or all of its officials and employees or former officials or employees against expenses actually and necessarily incurred by them in connection with the defense or settlement of any action, suit, or proceeding in which they, or any of them, are made a party or parties thereto by reason of being or having been an official or employee of the credit

union. A credit union may not indemnify any or all of its officials and employees or former officials or employees against expenses actually and necessarily incurred by them in relation to matters as to which any such official or employee shall be adjudged in such action, suit, or proceeding to be liable for willful misconduct in the performance of duty and to such matters as are settled by agreement predicated on the existence of such liability.

Source: Laws 1996, LB 948, § 63.

21-1764 Officers; duties.

(1) The members of the board of directors shall elect from their own number a chairperson, one or more vice-chairpersons, a treasurer, and a secretary, at the organizational meeting held as provided in the bylaws. The board shall fill vacancies in the positions described in this subsection as they occur. The treasurer and the secretary may be the same individual. The board shall also elect any other officers that are specified in the bylaws.

(2) The terms of the chairperson, vice-chairperson, treasurer, and secretary shall be for one year or until their successors are chosen and have been duly qualified. If the chairperson, a vice-chairperson, the treasurer, or the secretary is suspended, is removed, or has resigned as a board member, his or her position shall be deemed vacant.

(3) The duties of the officers shall be prescribed in the bylaws.

(4) The board of directors shall appoint a president to act as the chief executive officer of the credit union and to be in active charge of the credit union's operations.

(5) Notwithstanding any other provision of the Credit Union Act, a credit union may use any titles it so chooses for the officials holding the positions described in this section, as long as such titles are not misleading.

Source: Laws 1996, LB 948, § 64.

21-1765 Board of directors; authority.

The board of directors shall direct the business affairs, funds, and records of the credit union.

Source: Laws 1996, LB 948, § 65.

21-1766 Executive committee.

The board of directors may appoint from its own number an executive committee, consisting of not less than three directors, which may be authorized to act for the board in all respects, subject to any conditions or limitations prescribed by the board.

Source: Laws 1996, LB 948, § 66.

21-1767 Meetings of directors.

(1) The board of directors shall have regular meetings as often as necessary but not less frequently than once a month unless otherwise approved by the Director of Banking and Finance. Special meetings of the board may be called as provided in the bylaws.

(2) Unless the articles of association or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special

meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means shall be deemed to be present in person at the meeting.

(3) If the Director of Banking and Finance deems it expedient, he or she may call a meeting of the board of directors of any credit union, for any purpose, by giving notice to the directors of the time, place, and purpose thereof at least three business days prior to the meeting, either by personal service or by registered or certified mail sent to their last-known addresses as shown on the credit union books.

(4) A full and complete record of the proceedings and business of all meetings of the board of directors shall be recorded in the minutes of the meeting.

Source: Laws 1996, LB 948, § 67; Laws 2000, LB 932, § 24.

21-1767.01 Bond.

The department shall require each credit union to obtain a fidelity bond, naming the credit union as obligee, in an amount to be determined by the department. The bond shall be issued by an authorized insurer and shall be conditioned to protect and indemnify the credit union from loss which it may sustain of money or other personal property, including that for which the credit union is responsible through or by reason of the fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, misapplication, misappropriation, or any other dishonest or criminal act of or by any of its officers, directors, supervisory committee members, credit committee members, or employees. Such bond may contain a deductible clause in an amount to be approved by the director. An executed copy of the bond shall be filed with and approved by the director and shall remain a part of the records of the department. If the premium of the bond is not paid, the bond shall not be canceled or subject to cancellation unless at least ten days' advance notice, in writing, is filed with the department by the insurer. No bond which is current with respect to premium payments shall be canceled or subject to cancellation unless at least forty-five days' advance notice, in writing, is filed with the department by the insurer. The bond shall always be open to public inspection during the office hours of the department. In the event a bond is canceled, the department may take whatever action it deems appropriate in connection with the continued operation of the credit union involved.

Source: Laws 2000, LB 932, § 25.

21-1768 Duties of directors.

In addition to the duties found elsewhere in the Credit Union Act, the board of directors shall:

(1) Act upon applications for membership or appoint one or more membership officers to act on applications for membership under such conditions as prescribed by the board. A person denied membership by a membership officer may appeal the denial in writing to the board;

(2) Purchase adequate bond coverage as required by section 21-1767.01;

(3) Report to the department all bond claims within thirty calendar days after filing and all frauds and embezzlements involving officials or employees within thirty calendar days after discovery;

(4) Determine from time to time the interest rate or rates, consistent with the Credit Union Act, to be charged on loans, or under such conditions as prescribed by the board, delegate the authority to make such determinations and to authorize any interest refunds on such classes of loans and under such conditions as the board prescribes;

(5) Establish the policies of the credit union with respect to (a) shares, share drafts, and share certificates and (b) the granting of loans and the extending of lines of credit, including, subject to the limitations contained in section 21-1791, the maximum amount which may be loaned to any one member;

(6) Declare dividends on shares or delegate the authority to declare dividends under such conditions as prescribed by the board;

(7) Have charge of investment of funds, except that the board may appoint an investment committee of not less than three directors or an investment officer who is either a member of the board of directors or an employee of the credit union to make investments under conditions and policies established by the board and to make monthly reports to the board;

(8) Establish written policies for investments, including deposits and loans other than those to individuals, which address, at a minimum, investment objectives, investment responsibility, portfolio composition, diversification, and the financial condition of the investment obligor;

(9) Authorize the employment of such persons necessary to carry on the business of the credit union and fix the compensation, if any, of the chief executive officer;

(10) Approve an annual operating budget for the credit union which includes provisions for the compensation of employees;

(11) Designate a depository or depositories for the funds of the credit union;

(12) Suspend or remove any or all members of the credit committee, if any, for failure to perform their duties;

(13) Appoint any special committee deemed necessary;

(14) Adopt and enforce the overall policies for the operation of the credit union; and

(15) Perform such other duties as directed by the members of the credit union from time to time and perform or authorize any action not inconsistent with the Credit Union Act and not specifically reserved by the bylaws for the members of the credit union.

Source: Laws 1996, LB 948, § 68; Laws 2000, LB 932, § 26.

21-1769 Credit committee; credit manager; loan officers; powers and duties.

(1) The credit committee shall have the general supervision of all loans to members and may approve or disapprove those loans subject to written policies established by the board of directors.

(2) A credit manager having the same authority as a credit committee may be appointed in lieu of a credit committee as prescribed in the bylaws. The president may serve as the credit manager.

(3) The board of directors may appoint one or more loan officers and necessary assistants.

(4) The loan officers shall act under the direction of the president or the president's designee.

(5) The loan officer or credit manager may approve or disapprove loans, lines of credit, or advances from lines of credit and approve withdrawals of obligated members only as prescribed in writing by the board of directors.

(6) All loans approved by the loan officer shall be reviewed by the credit committee during one of its regular meetings.

(7) If the board of directors appoints a credit manager in lieu of a credit committee, all such loans approved by loan officers shall be reviewed by the credit manager.

(8) Other duties and responsibilities of the credit committee or credit manager may be prescribed in the bylaws.

Source: Laws 1996, LB 948, § 69.

21-1770 Loan officer license.

The chief executive officer or the credit committee may apply to the department on forms supplied by the department for the licensing of one or more loan officers in order to delegate to such loan officers the power to approve loans and disburse loan funds up to the limits and according to policies established by the credit committee, if any, and in the absence of a credit committee, the board of directors. Such application shall include information deemed necessary by the department and shall be signed by the entire credit committee, if any, and in the absence of a credit committee, the entire board of directors, as well as the new loan officer seeking a license. No person shall act in the capacity of loan officer for more than thirty days until approved by the department.

Source: Laws 1996, LB 948, § 70; Laws 1999, LB 107, § 4.

21-1771 Supervisory committee; duties; audit.

(1) Unless the credit union has been audited by a certified public accountant, the supervisory committee shall make or cause to be made a comprehensive annual audit of the books and affairs of the credit union. It shall submit a report of each annual audit to the board of directors and a summary of that report to the members at the next annual meeting of the credit union.

(2) The supervisory committee shall make or cause to be made such supplementary audits, examinations, and verifications of members' accounts as it deems necessary or as are required by the director or the board of directors and shall submit reports of these supplementary audits to the board of directors.

(3) Nothing in this section shall prohibit the department for cause from requiring a credit union to obtain a qualified opinion audit conducted by a certified public accountant and paid for by the credit union.

Source: Laws 1996, LB 948, § 71.

21-1772 Suspension and removal of officials.

(1) The supervisory committee may, by a unanimous vote of the entire committee, suspend any member of the credit committee and shall report such action to the board of directors for appropriate action. The board shall meet not

less than seven nor more than twenty-one calendar days after such suspension. The suspended person shall have the right to appear and be heard at such meeting of the board.

(2) The supervisory committee may, by a unanimous vote of the entire committee, suspend any officer or member of the board of directors. Upon the request of the suspended director made fifteen calendar days after the suspension and supported by ten percent of the membership, the credit union shall call a special members' meeting which shall be held not less than seven nor more than twenty-one calendar days after such request. At such meeting the members shall decide whether to sustain or reverse the action of the supervisory committee.

(3) The board of directors may suspend or remove any member of the supervisory committee for cause by a two-thirds vote of the total board membership for failure to perform his or her duties in accordance with the Credit Union Act, the articles of association, or the bylaws.

(4) The board of directors may, by majority vote, suspend or remove any officer from his or her duties.

(5) The members of the credit union may remove any official of the credit union from office but only at a special meeting of the members called for that purpose.

Source: Laws 1996, LB 948, § 72.

21-1773 Share insurance.

No credit union organized under the Credit Union Act shall establish share accounts for any person other than a subscriber before the credit union has received a certificate of federal share insurance issued by the National Credit Union Administration under section 201 et seq. of the Federal Credit Union Act, 12 U.S.C. 1781 et seq.

Source: Laws 1996, LB 948, § 73.

21-1774 Shares.

(1) Share accounts and membership shares, if any, may be subscribed to, paid for, and transferred in such manner as the bylaws may prescribe. A credit union may have more than one class of share accounts subject to such terms, rates, and conditions as the board of directors establishes or as provided for in the underlying contract. All classes of share accounts shall be treated equally in the event of liquidation of the credit union.

(2) A credit union may require its members to subscribe to and make payments on membership shares.

(3) The par value of share accounts and membership shares shall be as prescribed in the bylaws.

(4) Membership shares may not be pledged as security on any loan.

Source: Laws 1996, LB 948, § 74.

21-1775 Special purpose share accounts.

Christmas clubs, vacation clubs, and other special purpose share accounts may be established and offered to members under the conditions and restric-

tions established by the board of directors if provided for in and consistent with the bylaws.

Source: Laws 1996, LB 948, § 75.

21-1776 Dividends.

(1) The board of directors may periodically authorize and declare dividends to be paid on share accounts and membership shares, if any, from the credit union's undivided earnings after provisions have been made for the required reserves. Share accounts within the same class and of different classes may be paid dividends at differing rates depending on the amounts in the account or the contractual terms applicable to the account.

(2) Dividends shall not be declared or paid at a time when the credit union is insolvent or when payment thereof would render the credit union insolvent.

Source: Laws 1996, LB 948, § 76.

21-1777 Accounting for interest and dividend expenses.

A credit union shall accrue, as an expense on a monthly basis, all dividends on any type of share account whether or not the rates involved have been specified or contracted for in advance. This section shall not be interpreted to permit a credit union to pay a dividend, except as provided in section 21-1776. Reasonable estimates may be used for the expense accrual required by this section except at the end of a dividend period.

Source: Laws 1996, LB 948, § 77.

21-1778 Maximum share account.

A credit union may, by action of the board of directors, establish a maximum amount that a member may have in any given type of share account. Any such action shall not affect any contract entered into by the credit union prior to the time of such action.

Source: Laws 1996, LB 948, § 78.

21-1779 Withdrawals.

(1) Shares may be withdrawn for payment to the account holder or to third parties in the manner and in accordance with procedures established by the board of directors subject to any rules and regulations prescribed by the department.

(2) Share accounts shall be subject to any withdrawal notice requirement specified in the contract creating the account. In addition, a credit union may impose a thirty-day withdrawal notice on all accounts when it has not specifically waived this right if it notifies the department of such imposition and the reasons therefor.

(3) A membership share may not be redeemed or withdrawn except upon termination of membership in the credit union.

Source: Laws 1996, LB 948, § 79.

21-1780 Fees related to member accounts.

(1) A credit union may collect reasonable fees and charges with respect to member accounts. The fees may be for:

(a) Additional copies of periodic statements;

(b) Various types of transactions on a per-transaction basis;

(c) A check or draft returned to the credit union by another financial institution because it was drawn against a closed account or an account with insufficient funds or for any other reason;

(d) Stop-payment orders;

(e) Any form of members' initiated withdrawal requests which the credit union rejects for any justifiable reason; and

(f) Any other service or activity relating to member share accounts.

(2) No credit union shall impose or increase any fee after October 1, 1996, until thirty calendar days after notification has been provided or made available to credit union members.

Source: Laws 1996, LB 948, § 80.

21-1781 Minor accounts.

A share account may be issued to and deposits received from a member less than nineteen years of age who may withdraw funds from such account, including the dividends thereon. Payments on a share account by such individual and withdrawals on a share account by such individual shall be valid in all respects.

Source: Laws 1996, LB 948, § 81.

21-1782 Joint accounts.

(1) A credit union member may designate any person or persons to own a share account with the member in joint tenancy with right of survivorship, as a tenant in common, or under any other form of joint ownership permitted by law, but no co-owner, unless a member in his or her own right, shall be permitted to vote, obtain loans, or hold office. In the event of the death of the person who owns the share account, the share account funds and any dividends thereon shall be paid to the co-owner and shall not be maintained in a share account unless the co-owner is a member in his or her own right.

(2) Payment of part or all of such accounts to any of the co-owners shall, to the extent of such payment, discharge the credit union's liability to all such co-owners unless the account agreement contains a prohibition or limitation on such payment.

Source: Laws 1996, LB 948, § 82.

21-1783 Trust accounts.

(1) Share accounts may be owned by a member in trust for a beneficiary.

(2) A beneficiary may be a minor, but no beneficiary, unless a member in his or her own right, shall be permitted to vote, obtain loans, or hold office or be required to pay a membership fee.

(3) Payment of part or all of such trust account to the party in whose name the account is held shall, to the extent of such payment, discharge the liability of the credit union to that party and to the beneficiary, and the credit union shall be under no obligation to see to the application of such payment.

(4) In the event of the death of the party who owns the trust account, the account funds and any dividends thereon shall be paid to the beneficiary if the credit union has not been given any other written notice of the existence or terms of any other trust and has not received a court order as to the disposition of the account.

Source: Laws 1996, LB 948, § 83.

21-1784 Liens.

A credit union shall have a lien on the share accounts from which a member may withdraw funds for his or her own use for (1) any loan or other obligation on which the member is an obligor or guarantor and (2) any other liability at the time owing to the credit union, unless the lien has been contractually waived, would cause the loss of a tax benefit for the member, or is prohibited by law. Such a lien shall not apply to an account in which the member may act solely on behalf of another person, nor shall it apply to an account in which the consent of a person not obligated on the loan or other obligation is required for a withdrawal. A credit union may exercise the lien up to the full amount of the account by offsetting funds in the account against any sums past due under such an obligation or, in the case of an obligation which has been accelerated, against the entire amount of the obligation.

Source: Laws 1996, LB 948, § 84.

21-1785 Dormant accounts.

If there has been no activity in a share account for one year, except for the posting of dividends, a credit union may impose a reasonable maintenance fee as provided in the bylaws.

Source: Laws 1996, LB 948, § 85.

21-1786 Reduction in shares.

Whenever the losses of a credit union, resulting from a depreciation in value of its loans or investments or otherwise, exceed its undivided earnings and reserves so that the estimated value of its assets is less than the total amount of share accounts and membership shares and the board of directors determines that the credit union may be subject to involuntary liquidation, the board may propose a reduction in shares. The credit union may, by a majority vote of those voting on the proposition, with the approval of the department, order a reduction in the membership shares and share accounts of each of its shareholders to divide the loss in proportion to the shareholdings held by shareholders in their respective share accounts with such terms as the department may prescribe.

Source: Laws 1996, LB 948, § 86.

21-1787 Purpose and conditions of loans.

Subject to the restrictions contained in the Credit Union Act, a credit union may make loans to its members for provident or productive purposes upon such terms and conditions and upon such security, real or personal, or on an unsecured basis as prescribed in its bylaws or written lending policy.

Source: Laws 1996, LB 948, § 87.

21-1788 Interest rate.

The interest rates on loans shall be determined by the board of directors, except that the rate shall not exceed eighteen percent per annum on the unpaid balance of the loan. The board may also authorize any refund of interest on such classes of loans under such conditions as it prescribes.

Source: Laws 1996, LB 948, § 88.

21-1789 Other charges related to loans.

(1) In addition to interest charged on loans, a credit union may charge members all reasonable expenses in connection with the making, closing, disbursing, extending, collecting, or renewing of loans.

(2) A credit union may assess charges to members, in accordance with its bylaws, for failure to meet their obligations to the credit union in a timely manner.

Source: Laws 1996, LB 948, § 89.

21-1790 Loan documentation.

Except as provided in section 21-1793, every application for a loan shall be made in writing upon a form prescribed by the credit union. All loan obligations shall be evidenced by a written document.

Source: Laws 1996, LB 948, § 90.

21-1791 Loan limit.

The aggregate of loans to any one member shall be limited to ten percent of a credit union's share accounts, undivided earnings, and reserves. This limit shall not apply to loans which are fully secured by assignment of share accounts in the credit union.

Source: Laws 1996, LB 948, § 91.

21-1792 Installments.

A member may receive a loan in installments or in one sum and may prepay the whole or any part of the loan without penalty on any day on which the credit union is open for business. On a first or second mortgage a credit union may require that any partial prepayment (1) be made on the date monthly installments are due and (2) be in the amount of that part of one or more monthly installments that would be applicable to principal.

Source: Laws 1996, LB 948, § 92.

21-1793 Line of credit.

(1) Upon application by a member, the credit union may approve a self-replenishing line of credit, either on an unsecured basis or secured by real or personal property, and loan advances may be granted to the member within the limit of such line of credit. When a line of credit has been approved, no additional credit application shall be required as long as the aggregate indebtedness of the line of credit with the credit union does not exceed the approved limit. The credit union may, at its option, require reapplication for a line of credit either periodically or as circumstances warrant.

(2) A line of credit shall be subject to a periodic review by the credit union in accordance with the written policies of the board of directors.

Source: Laws 1996, LB 948, § 93.

21-1794 Participation loans.

A credit union may participate in loans to credit union members jointly with other credit unions, credit union organizations, or other organizations pursuant to written policies established by the board of directors. A credit union which originates such a loan shall retain an interest of at least ten percent of the face amount of the loan.

Source: Laws 1996, LB 948, § 94.

21-1795 Other loan programs.

(1) A credit union may participate in any guaranteed loan program of the federal or state government under the terms and conditions specified in the law under which such a program is provided.

(2) A credit union may purchase the conditional sales contracts, notes, and similar instruments of its members.

Source: Laws 1996, LB 948, § 95.

21-1796 Loans to officials.

(1) A credit union may, if permitted by its bylaws, make loans to its officials, employees, and loan officers if the loan complies with all lawful requirements under the Credit Union Act with respect to other members and is not on terms more favorable than those extended to other members.

(2) If permitted in its bylaws, a credit union may permit its officials, employees, and loan officers to act as comakers, guarantors, or endorsers of loans to members of their immediate families, but not otherwise.

(3) No loan applicant may pass on his or her own loan. In the case of a loan to the chief executive officer, the loan must be approved by the board of directors, an executive committee, or the credit committee, if the credit union has a credit committee, as specified in the bylaws.

(4) The board of directors shall establish a policy on loans to officials and employees of a credit union if such loans are permitted in the bylaws.

Source: Laws 1996, LB 948, § 96.

21-1797 Liability insurance.

A credit union may purchase and maintain insurance on behalf of any person who is or was an official, employee, or agent of the credit union or who is or was serving at the request of the credit union as an official, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the credit union would have the power to indemnify such person against such liability.

Source: Laws 1996, LB 948, § 97.

21-1798 Money-type instruments.

A credit union may collect, receive, and disburse money in connection with the providing of negotiable checks, money orders, traveler's checks, and other money-type instruments, for the providing of services through automatic teller machines, and for such other purposes as may provide benefit or convenience to its members. A credit union may charge fees for such services.

Source: Laws 1996, LB 948, § 98.

21-1799 Federally authorized plans; powers; treatment.

(1) All credit unions chartered under the laws of Nebraska shall be qualified to act as a trustee or custodian within the provisions of the federal Self-Employed Individuals Tax Retirement Act of 1962 or under the terms and provisions of section 408(a) of the Internal Revenue Code if the provisions of such retirement plan require the funds of such trust or custodianship to be invested exclusively in shares or accounts in the credit union or other credit unions.

(2) All credit unions chartered under the laws of Nebraska are qualified to act as trustee or custodian of a medical savings account created within the provisions of section 220 of the Internal Revenue Code and a health savings account created within the provisions of section 223 of the Internal Revenue Code. Except for judgments against the medical savings account holder or health savings account holder or his or her dependents for qualified medical expenses as defined under section 223(d)(2) of the Internal Revenue Code, funds credited to a medical savings account or health savings account below twenty-five thousand dollars are not susceptible to levy, execution, judgment, or other operation of law, garnishment, or other judicial enforcement and are not an asset or property of the account holder for purposes of bankruptcy law.

(3) All credit unions chartered under the laws of Nebraska are qualified to act as trustee or custodian of an education individual retirement account created within the provisions of section 530 of the Internal Revenue Code.

(4) All credit unions chartered under the laws of Nebraska are qualified to act as trustee or custodian of a Roth IRA created within the provisions of section 408A of the Internal Revenue Code.

(5) If any such plan, in the judgment of the credit union, constitutes a qualified plan under the federal Self-Employed Individuals Tax Retirement Act of 1962, or under the terms and provisions of section 220, 223, 408(a), 408A, or 530 of the Internal Revenue Code, and the regulations promulgated thereunder at the time the trust was established and accepted by the credit union is subsequently determined not to be such a qualified plan, or subsequently ceases to be such a qualified plan, in whole or in part, the credit union may continue to act as trustee of any deposits which have been made under such plan and to dispose of such deposits in accordance with the directions of the member and beneficiaries thereof.

(6) No credit union, with respect to savings made under this section, shall be required to segregate such savings from other assets of the credit union, but the credit union shall keep appropriate records showing in detail all transactions engaged in pursuant to this section.

Source: Laws 1996, LB 948, § 99; Laws 1999, LB 107, § 5; Laws 2005, LB 465, § 2.

21-17,100 Investment of funds.

The board of directors shall have charge of the investment of funds, except that the board may designate an investment committee or investment officer to make investments on its behalf under written investment policies established by the board.

Source: Laws 1996, LB 948, § 100.

21-17,101 Deposit of funds.

The board of directors shall designate a depository or depositories for the funds of the credit union.

Source: Laws 1996, LB 948, § 101.

21-17,102 Authorized investments.

(1) Funds not used in loans to members may be invested:

(a) In securities, obligations, or other instruments of or issued by or fully guaranteed as to principal and interest by the United States of America or any agency or instrumentality thereof or in any trust or trusts established for investing directly or collectively in the same;

(b) In securities, obligations, or other instruments of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories organized by Congress or any political subdivision thereof;

(c) In deposits, obligations, or other accounts of financial institutions organized under state or federal law;

(d) In loans to or in share accounts of other credit unions or corporate central credit unions;

(e) In obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, or any corporation designated in 31 U.S.C. 9101 as a wholly owned government corporation; in obligations, participation certificates, or other instruments of or insured by or fully guaranteed as to principal and interest by the Federal National Mortgage Association or the Government National Mortgage Association; in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1454 et seq.; in obligations or other instruments or securities of the Student Loan Marketing Association; or in obligations, participation, securities, or other instruments of or issued by or fully guaranteed as to principal and interest by any other agency of the United States. A state credit union may issue and sell securities which are guaranteed pursuant to section 306(g) of the National Housing Act, 12 U.S.C. 1721(g);

(f) In participation certificates evidencing a beneficial interest in obligations or in a right to receive interest and principal collections therefrom, which obligations have been subjected by one or more government agencies to a trust or trusts for which any executive department, agency, or instrumentality of the United States or administrator thereof has been named to act as trustee;

(g) In share accounts or deposit accounts of any corporate central credit union in which such investments are specifically authorized by the board of directors of the credit union making the investment;

(h) In the shares, stock, or other obligations of any other organization, not to exceed ten percent of the credit union's capital and not to exceed five percent of the credit union's capital in any one corporation's stock, bonds, or other obligations, unless otherwise approved by the director. Such authority shall not include the power to acquire control, directly or indirectly, of another financial institution, nor invest in shares, stocks, or obligations of any insurance company or trade association except as otherwise expressly provided for or approved by the director;

(i) In the capital stock of the National Credit Union Administration Central Liquidity Facility;

(j) In obligations of or issued by any state or political subdivision thereof, including any agency, corporation, or instrumentality of a state or political subdivision, except that no credit union may invest more than ten percent of its capital in the obligations of any one issuer, exclusive of general obligations of the issuer;

(k) In securities issued pursuant to the Nebraska Business Development Corporation Act; and

(l) In participation loans with other credit unions, credit union organizations, or other organizations.

(2) In addition to investments expressly permitted by the Credit Union Act, a credit union may make any other type of investment approved by the department by rule, regulation, or order.

Source: Laws 1996, LB 948, § 102; Laws 1997, LB 137, § 15; Laws 2003, LB 217, § 31; Laws 2005, LB 533, § 31.

Cross References

Nebraska Business Development Corporation Act, see section 21-2101.

21-17,103 Transfer to regular reserve account.

(1) Immediately before the payment of each dividend, the gross earnings of the credit union shall be determined. From this amount there shall be set aside as a regular reserve account for contingencies an amount as set forth in 12 C.F.R. 702.

(2) The director may at any time require the credit union to increase the amount set aside in a regular reserve account pursuant to subsection (1) of this section or to establish a special reserve account if, in the judgment of the director, the financial condition of the credit union warrants such action.

Source: Laws 1996, LB 948, § 103; Laws 2001, LB 53, § 25.

21-17,104 Allowance-for-loan-losses account.

(1) A credit union shall establish an allowance-for-loan-losses account based upon reasonably foreseeable loan losses.

(2) For purposes of calculating required transfers of income to the regular reserve account pursuant to sections 21-17,103 to 21-17,107, any balance in the allowance-for-loan-losses account may be included with the balance in the regular reserve account.

Source: Laws 1996, LB 948, § 104.

21-17,105 Use of regular reserve account.

The regular reserve account shall belong to the credit union and shall be used to meet losses on risk assets and to meet such other classes of losses as are approved by the director. The regular reserve account shall not be distributed except on liquidation of the credit union or in accordance with a plan approved by the director.

Source: Laws 1996, LB 948, § 105.

21-17,106 Special reserve account.

In addition to the regular reserve account, a special reserve account to protect the interest of the members shall be established when required by rule or regulation or when found by the board of directors of the credit union or by the director, in any special case, to be necessary for that purpose.

Source: Laws 1996, LB 948, § 106; Laws 1997, LB 137, § 16.

21-17,107 Waiver of reserve requirements.

The director may waive, in whole or in part, and on a general or case-by-case basis, the reserving requirements of sections 21-17,103 to 21-17,107 when, in his or her opinion, such a waiver is necessary or desirable to protect the public interest and fulfill the purpose of the Credit Union Act.

Source: Laws 1996, LB 948, § 107.

21-17,108 Liquidation.

(1) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section.

(2) If the board of directors decides to begin dissolution procedures, the board shall adopt a resolution recommending that the credit union be dissolved voluntarily and directing that the question of liquidation be submitted to the credit union members.

(3) Within ten days after the board of directors decides to submit the question of liquidation to the members, the president shall notify the department and the National Credit Union Administration in writing of such decision and setting forth the reasons for the proposed liquidation. Within ten days after the members act on the question of liquidation, the president shall notify the department and the National Credit Union Administration in writing as to the action of the members on the proposal.

(4) As soon as the board of directors decides to submit the question of liquidation to the members, payments on, withdrawal of, and making any transfer of share accounts to loans and interest, making investments of any kind, and granting of loans may be restricted or suspended pending action by the members on the proposal to dissolve. Upon approval by the members of the question of liquidation, all business transactions shall be permanently discontinued. Necessary expenses of operation shall continue to be paid upon the authorization of the board or the liquidating agent during the period of liquidation.

(5) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds majority of the members present at a regular or special meeting of the members shall be required. When authorization for liquidation is to be obtained at a meeting of the members,

notice in writing shall be given to each member, by first-class mail, at least ten days prior to such meeting.

(6) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting on loans and distributing its assets, and doing all acts required in order to conclude its business and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully concluded.

(7) The board of directors or the liquidating agent shall distribute the assets of the credit union or the proceeds of any disposition of the assets pursuant to section 21-1734.

(8) As soon as the board of directors or the liquidating agent determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed pursuant to section 21-1734, the board or the liquidating agent shall execute a certificate of dissolution on a form prescribed by the department and shall file the same, together with all pertinent books and records of the liquidating credit union, with the department and the credit union shall be dissolved.

Source: Laws 1996, LB 948, § 108.

21-17,109 Merger or consolidation.

(1) Any credit union organized under the Credit Union Act may, with the approval of the department, merge or consolidate with one or more other credit unions organized under the act or under the laws of the United States, if the credit unions merging or consolidating possess coinciding common bonds of association.

(2) When two or more credit unions merge or consolidate, one shall be designated as the continuing credit union or a totally new credit union shall be organized. If the latter procedure is followed, the new credit union shall be organized under the Credit Union Act or under the laws of the United States. All participating credit unions other than the continuing or new credit union shall be designated as merging credit unions.

(3) Any merger or consolidation of credit unions shall be done according to a plan of merger or consolidation. After approval by the boards of directors of all participating credit unions, the plan shall be submitted to the department for preliminary approval. If the plan includes the organization of a new credit union, all documents required pursuant to section 21-1724 shall be submitted as a part of the plan. In addition, each participating credit union shall submit the following information:

(a) The time and place of the meeting of the boards of directors at which the plan of merger or consolidation was agreed upon;

(b) The vote of the directors in favor of the adoption of the plan; and

(c) A copy of a resolution or other action by which the plan was agreed upon.

The department shall grant preliminary approval if the plan has been approved properly by the boards of directors and if the documentation required to organize a new credit union, if any, complies with section 21-1724. The director, in his or her discretion, may order a hearing be held if he or she determines that the condition of the acquiring credit union warrants a hearing or that the plan of merger would be unfair to the merging credit union.

(4) After the department grants preliminary approval, each merging credit union shall, unless waived by the department, conduct a membership vote on its participation in the plan. The vote shall be conducted either at a special meeting called for that purpose or by mail ballot. If a majority of the members voting approve the plan, the credit union shall submit a record of that fact to the department indicating the vote by which the members approved the plan and either the time and place of the membership meeting or the mailing date and closing date of the mail ballot.

(5) The department may waive any voting requirements described in the Credit Union Act for any credit union upon the determination that it is in the best interests of the membership or that the credit union is insolvent or in imminent danger of becoming insolvent.

(6) The director shall grant final approval of the plan of merger or consolidation after determining that the requirements of subsections (1) through (4) of this section have been met in the case of each merging credit union. If the plan of merger or consolidation includes the organization of a new credit union, the department must approve the organization of the new credit union under section 21-1724 as part of the approval of the plan of merger or consolidation. The department shall notify all participating credit unions of the plan.

(7) Upon final approval of the plan by the department, all property, property rights, and members' interests in each merging credit union shall vest in the continuing or new credit union as applicable without deed, obligations, and other instruments of transfer, and all debts, obligations, and liabilities of each merging credit union shall be deemed to have been assumed by the continuing or new credit union. The rights and privileges of the members of each participating credit union shall remain intact. If a person is a member of more than one of the participating credit unions, the person shall be entitled to only a single set of membership rights in the continuing or new credit union.

(8) Notwithstanding any other provision of law, the department may authorize a merger or consolidation of a credit union which is insolvent or which is in danger of insolvency with any other credit union or may authorize a credit union to purchase any of the assets of or assume any of the liabilities of any other credit union which is insolvent or which is in danger of insolvency, if the department is satisfied that:

(a) An emergency requiring expeditious action exists with respect to such credit union;

(b) Other alternatives for such credit union are not reasonably available; and

(c) The public interest would best be served by the approval of such merger, consolidation, purchase, or assumption.

(9) Notwithstanding any other provision of law, the director may authorize an institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation or any derivative thereof, to purchase any assets of or assume any liabilities of a credit union which is insolvent or in danger of insolvency, except that prior to exercising this authority the director shall attempt to effect a merger or consolidation with, or purchase or assumption by, another credit union as provided in subsection (8) of this section.

(10) For purposes of the authority contained in subsection (9) of this section, insured share accounts of each credit union may, upon consummation of the purchase or assumption, be converted to insured deposits or other comparable

accounts in the acquiring institution, and the department and the National Credit Union Share Insurance Fund shall be absolved of any liability to the credit union's members with respect to those accounts.

Source: Laws 1996, LB 948, § 109; Laws 1997, LB 137, § 17; Laws 2002, LB 957, § 19.

21-17,110 Conversion.

(1) A credit union incorporated under the laws of this state may be converted into a federal credit union organized under the laws of the United States as prescribed in section 21-17,111.

(2) A federal credit union organized under the laws of the United States may be converted into a credit union organized under the laws of this state as prescribed in section 21-17,112.

Source: Laws 1996, LB 948, § 110.

21-17,111 Conversion from state to federal credit union.

(1) Any credit union organized under the Credit Union Act may, with the approval of the department and with the approval of a majority of the credit union members attending an annual or special meeting of the credit union, be converted into a federal credit union. The conversion shall not release the state-organized credit union from its obligations to pay or discharge all liabilities created by law or incurred by it before the conversion, from any tax imposed by the laws of this state up to the day of the conversion in proportion to the time which has elapsed since the last preceding payment on such obligations or liabilities, or from any assessment, penalty, or forfeiture imposed or incurred under the laws of this state up to the date of the conversion. Conversion shall be made pursuant to a conversion plan approved by the department and shall not be made (a) to defeat or defraud any of the creditors of the credit union or (b) to avoid the requirements of any law of this state designed to protect consumers. The conversion plan shall address required notices and disclosures of information concerning advantages and disadvantages to the credit union and its members of the proposed conversion. Certified copies of all proceedings had by the board of directors and by the members of the credit union shall be filed by the board of directors with the department, and in addition, the credit union shall furnish to the department a certified copy of consent or approval of the National Credit Union Administration if such consent is required by the laws of the United States. Two copies of the proceedings shall be filed with the department. The department shall certify and forward by registered mail one copy of the proceedings to the county clerk of the county in which the credit union is located.

(2) When conversion becomes effective, all property of the credit union, including all rights, title, and interest in and to all kinds of property, whether real, personal, or mixed, and things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, belonging, or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and remain the property of the converted credit union, which shall have, hold, and enjoy the property in its own right as fully and to the same extent as the property was possessed, held, and enjoyed prior to the conversion. The converted credit union shall be deemed to be a continuation of the same

entity. All the rights, obligations, and relations of the credit union to or in respect to any person, estate, creditor, member, trust, trustee, or beneficiary of any trust or fiduciary function shall remain unimpaired. The credit union shall continue to hold all the rights, obligations, relations, and trusts, and the duties and liabilities connected therewith, and shall execute and perform every trust and relation in the same manner as if the credit union had not converted.

Source: Laws 1996, LB 948, § 111.

21-17,112 Conversion from federal to state credit union.

(1) A federal credit union organized under the Federal Credit Union Act, 12 U.S.C. 1753 et seq., and meeting all the requirements to become a state credit union organized under the Credit Union Act may, with the approval of the department and in compliance with the applicable law under which it was organized, be converted into a state credit union organized under the Credit Union Act. The required articles of association may be executed by a majority of the board of directors of the converting credit union and presented to the department for appropriate examination and approval. A majority of the directors, after executing the articles of association in duplicate, may execute all other papers, including the adoption of bylaws for the general government of the credit union consistent with the Credit Union Act, and do whatever may be required to complete its conversion.

(2) The board of directors of the converting credit union may continue to be directors of the credit union. If the director approves the articles of association as presented by the board of directors, the director shall notify the board of directors of his or her decision and shall immediately issue a certificate of approval attached to the duplicate articles of association and return it to the credit union. The certificate shall indicate that the laws of this state have been complied with and that the credit union and all its members, officials, and employees shall have the same rights, powers, and privileges and shall be subject to the same duties, liabilities, and obligations in all respects, as shall be applicable to credit unions originally organized under the Credit Union Act.

(3) The approval of the department shall be based on an examination of the credit union and the proceedings had by its board of directors and members with respect to conversion. A conversion shall not be made to defeat or defraud any of the creditors of the credit union. The expenses of an examination, which shall be computed in accordance with sections 8-605 and 8-606, shall be paid by the credit union.

(4) When the conversion becomes effective, all property of the converted credit union, including all its right, title, and interest in and to all property of whatsoever kind, whether real, personal, or mixed, and things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, belonging, or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and remain the property of the converted credit union, which shall have, hold, and enjoy the property in its own right as fully and to the same extent as the property was previously possessed, held, and enjoyed by it. The converted credit union shall be deemed to be a continuation of the same entity. All the rights, obligations, and relations of the credit union to or in respect to any person, estate, creditor, member, trustee, or beneficiary of any trust or fiduciary function shall remain unimpaired. The credit union

shall continue to hold all the rights, obligations, relations, and trusts, and the duties and liabilities connected therewith, and shall execute and perform every trust and relation in the same manner as if it had after the conversion assumed the trust or relation and obligation and liabilities connected with the trust or relation.

Source: Laws 1996, LB 948, § 112; Laws 1997, LB 137, § 18; Laws 2007, LB124, § 20.

21-17,113 Property taxation and collection.

The property of a credit union shall be subject to taxation in the same manner as provided by law in the case of corporations or individuals. Nothing in this section shall prevent holdings in any credit union organized under the Credit Union Act from being included in the valuation of the personal property of the owners or holders of such holdings in assessing taxes imposed by the authority of the state or any political subdivision thereof in which the credit union is located. The duty of collecting or enforcing the payment of such tax shall not be imposed upon any credit union.

Source: Laws 1996, LB 948, § 113.

21-17,114 Credit Union Act Fund; created; use; investment.

There is hereby created the Credit Union Act Fund. All funds available from the National Credit Union Share Insurance Fund shall be collected by the department and remitted to the State Treasurer for credit to the Credit Union Act Fund. The fund shall be administered by the department and used only for offsetting costs associated with the examination and supervision of federally insured, state-organized credit unions. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1996, LB 948, § 114.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

21-17,115 Credit union organized under laws of Nebraska; rights, powers, privileges, and immunities of federal credit union; exception.

Notwithstanding any of the other provisions of the Credit Union Act or any other Nebraska statute, any credit union incorporated under the laws of the State of Nebraska and organized under the provisions of the act shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of March 20, 2007, by a federal credit union doing business in Nebraska on the condition that such rights, powers, privileges, benefits, and immunities shall not relieve such credit union from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1977, LB 246, § 5; Laws 1978, LB 772, § 1; Laws 1979, LB 307, § 1; Laws 1980, LB 793, § 1; Laws 1981, LB 60, § 1; Laws 1982, LB 775, § 2; Laws 1983, LB 143, § 1; Laws 1984, LB 643, § 1; Laws 1985, LB 430, § 1; Laws 1986, LB 963, § 1; Laws 1987, LB 197, § 1; Laws 1988, LB 957, § 1; Laws 1989, LB 126,

§ 1; Laws 1990, LB 1017, § 1; Laws 1991, LB 97, § 1; Laws 1992, LB 984, § 1; Laws 1993, LB 122, § 1; Laws 1994, LB 878, § 1; Laws 1995, LB 76, § 1; R.S.Supp.,1995, § 21-17,120.01; Laws 1996, LB 948, § 115; Laws 1997, LB 152, § 1; Laws 1998, LB 1321, § 75; Laws 1999, LB 278, § 1; Laws 2000, LB 932, § 27; Laws 2001, LB 53, § 26; Laws 2002, LB 957, § 20; Laws 2003, LB 217, § 32; Laws 2004, LB 999, § 21; Laws 2005, LB 533, § 32; Laws 2006, LB 876, § 24; Laws 2007, LB124, § 21.

21-17,116 Credit unions existing prior to October 1, 1996; how treated.

Credit unions formed, merged, or consolidated pursuant to and in compliance with the laws of the State of Nebraska as they existed prior to October 1, 1996, shall not be required to meet formation, merger, or consolidation requirements but shall meet all other requirements set forth in the Credit Union Act.

Source: Laws 1996, LB 948, § 116.

21-17,117 Repealed. Laws 1996, LB 948, § 130.

21-17,117.01 Repealed. Laws 1996, LB 948, § 130.

21-17,117.02 Repealed. Laws 1996, LB 948, § 130.

21-17,117.03 Repealed. Laws 1996, LB 948, § 130.

21-17,117.04 Repealed. Laws 1996, LB 948, § 130.

21-17,117.05 Repealed. Laws 1996, LB 948, § 130.

21-17,118 Repealed. Laws 1996, LB 948, § 130.

21-17,119 Repealed. Laws 1988, LB 795, § 8.

21-17,120 Repealed. Laws 1996, LB 948, § 130.

21-17,120.01 Transferred to section 21-17,115.

21-17,120.02 Repealed. Laws 1996, LB 948, § 130.

21-17,121 Repealed. Laws 1996, LB 948, § 130.

21-17,122 Repealed. Laws 1996, LB 948, § 130.

21-17,123 Repealed. Laws 1996, LB 948, § 130.

21-17,124 Repealed. Laws 1996, LB 948, § 130.

21-17,125 Repealed. Laws 1996, LB 948, § 130.

21-17,126 Repealed. Laws 1996, LB 948, § 130.

(b) NEBRASKA DEPOSITORY INSTITUTION GUARANTY CORPORATION ACT

21-17,127 Repealed. Laws 2003, LB 131, § 40.

21-17,128 Repealed. Laws 2003, LB 131, § 40.

21-17,129 Repealed. Laws 2003, LB 131, § 40.

21-17,130 Repealed. Laws 2003, LB 131, § 40.

21-17,131 Repealed. Laws 2003, LB 131, § 40.

21-17,132 Repealed. Laws 2003, LB 131, § 40.

21-17,133 Repealed. Laws 2003, LB 131, § 40.

21-17,134 Repealed. Laws 2003, LB 131, § 40.

21-17,135 Repealed. Laws 2003, LB 131, § 40.

21-17,136 Repealed. Laws 2003, LB 131, § 40.

21-17,137 Repealed. Laws 2003, LB 131, § 40.

21-17,138 Repealed. Laws 2003, LB 131, § 40.

21-17,139 Repealed. Laws 2003, LB 131, § 40.

21-17,140 Repealed. Laws 2003, LB 131, § 40.

21-17,141 Repealed. Laws 2003, LB 131, § 40.

21-17,142 Repealed. Laws 2003, LB 131, § 40.

21-17,143 Repealed. Laws 2003, LB 131, § 40.

21-17,144 Repealed. Laws 2003, LB 131, § 40.

21-17,145 Repealed. Laws 2003, LB 131, § 40.

ARTICLE 18

MEMBERSHIP CORPORATIONS AND ASSOCIATIONS

Section
21-1801. Repealed. Laws 1973, LB 157, § 6.
21-1802. Repealed. Laws 1973, LB 157, § 6.
21-1803. Repealed. Laws 1973, LB 157, § 6.
21-1804. Repealed. Laws 1973, LB 157, § 6.

21-1801 Repealed. Laws 1973, LB 157, § 6.

21-1802 Repealed. Laws 1973, LB 157, § 6.

21-1803 Repealed. Laws 1973, LB 157, § 6.

21-1804 Repealed. Laws 1973, LB 157, § 6.

ARTICLE 19

NEBRASKA NONPROFIT CORPORATION ACT

Cross References

For provisions relating to disclosure of confidential information, see section 8-1401.

(a) GENERAL PROVISIONS

(b) ORGANIZATION

(c) PURPOSES AND POWERS

(d) NAMES

(e) OFFICE AND AGENT

(f) MEMBERS AND MEMBERSHIPS

(a) GENERAL PROVISIONS

21-1901 Act, how cited.

Sections 21-1901 to 21-19,177 shall be known and may be cited as the Nebraska Nonprofit Corporation Act.

Source: Laws 1996, LB 681, § 1.

21-1902 Legislative power.

The Legislature shall have the power to amend or repeal all or part of the Nebraska Nonprofit Corporation Act at any time and all domestic and foreign corporations subject to the act are governed by the amendment or repeal.

Source: Laws 1996, LB 681, § 2.

21-1903 Filing requirements.

(a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Secretary of State.

(b) The Nebraska Nonprofit Corporation Act must require or permit filing the document in the office of the Secretary of State.

(c) The document must contain the information required by the act. It may contain other information as well.

(d) The document must be typewritten or printed.

(e) The document must be in the English language. However, a corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be executed:

(1) By the presiding officer of its board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(g) The person executing a document shall sign it and state beneath or opposite the signature his or her name and the capacity in which he or she signs. The document may, but need not, contain:

(1) The corporate seal;

(2) An attestation by the secretary or an assistant secretary; or

(3) An acknowledgment, verification, or proof.

(h) If the Secretary of State has prescribed a mandatory form for a document under section 21-1904, the document must be in or on the prescribed form.

(i) The document must be delivered to the office of the Secretary of State for filing and must be accompanied by one exact or conformed copy (except as provided in sections 21-1936 and 21-19,154), the correct filing fee, and any tax, license fee, or penalty required by the Nebraska Nonprofit Corporation Act or other law.

Source: Laws 1996, LB 681, § 3.

21-1904 Forms.

(a) The Secretary of State may prescribe and furnish, on request, forms for: (1) An application for a certificate of existence; (2) a foreign corporation's application for a certificate of authority to transact business in this state; (3) a foreign corporation's application for a certificate of withdrawal; and (4) the biennial report. If the Secretary of State so requires, use of these forms is mandatory.

(b) The Secretary of State may prescribe and furnish, on request, forms for other documents required or permitted to be filed by the Nebraska Nonprofit Corporation Act but their use is not mandatory.

Source: Laws 1996, LB 681, § 4.

21-1905 Fees.

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered for filing:

	Document	Fee
(1)(i)	Articles of incorporation or (ii) documents relating to domestication	$10.00
(2)	Application for use of indistinguishable name	$25.00
(3)	Application for reserved name	$25.00
(4)	Notice of transfer of reserved name	$25.00

	Document	Fee
(5)	Application for registered name	$25.00
(6)	Application for renewal of registered name	$25.00
(7)	Corporation's statement of change of registered agent or registered office or both	$5.00
(8)	Agent's statement of change of registered office for each affected corporation (not to exceed a total of $1,000)	$25.00
(9)	Agent's statement of resignation	no fee
(10)	Amendment of articles of incorporation	$5.00
(11)	Restatement of articles of incorporation with amendments	$5.00
(12)	Articles of merger	$5.00
(13)	Articles of dissolution	$5.00
(14)	Articles of revocation of dissolution	$5.00
(15)	Certificate of administrative dissolution	no fee
(16)	Application for reinstatement following administrative dissolution	$5.00
(17)	Certificate of reinstatement	no fee
(18)	Certificate of judicial dissolution	no fee
(19)	Certificate of authority	$10.00
(20)	Application for amended certificate of authority	$5.00
(21)	Application for certificate of withdrawal	$5.00
(22)	Certificate of revocation of authority to transact business	no fee
(23)	Biennial report	$20.00
(24)	Articles of correction	$5.00
(25)	Application for certificate of good standing	$10.00
(26)	Any other document required or permitted to be filed by the Nebraska Nonprofit Corporation Act	$5.00
	(i) Amendments	$5.00
	(ii) Mergers	$5.00

(b) The Secretary of State shall collect a recording fee of five dollars per page in addition to the fees set forth in subsection (a) of this section.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(1) $1.00 per page; and

(2) $10.00 for the certificate.

(d) All fees set forth in this section shall be collected by the Secretary of State and remitted to the State Treasurer and credited two-thirds to the General Fund and one-third to the Corporation Cash Fund.

Source: Laws 1996, LB 681, § 5.

21-1906 Effective date of document.

(a) Except as provided in subsection (b) of this section, a document is effective:

(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's endorsement on the original document; or

(2) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date filed.

Source: Laws 1996, LB 681, § 6.

21-1907 Correcting filed document.

(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document: (1) Contains an incorrect statement or (2) was defectively executed, attested to, sealed, verified, or acknowledged.

(b) A document is corrected:

(1) By preparing articles of correction that (i) describe the document (including its filing date) or attach a copy of it to the articles, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

(2) By delivering the articles of correction to the Secretary of State.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and who are adversely affected by the correction. As to those persons, articles of correction are effective when filed.

Source: Laws 1996, LB 681, § 7.

21-1908 Secretary of State; duties.

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of section 21-1903, the Secretary of State shall file it.

(b) The Secretary of State files a document by stamping or otherwise endorsing ''Filed,'' together with the Secretary of State's name and official title and the date and the time of receipt, on both the original and the document copy. After filing a document, except as provided in sections 21-1936 and 21-19,154, the Secretary of State shall deliver the document copy, with the acknowledgment of receipt of the filing fee, if a fee is required, to the domestic or foreign corporation or its representative.

(c) Upon refusing to file a document, the Secretary of State shall return it to the domestic or foreign corporation or its representative within five days after the document was delivered, together with a brief, written explanation of the reason or reasons for the refusal.

(d) The Secretary of State's duty to file documents under this section is ministerial. Filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or in part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

Source: Laws 1996, LB 681, § 8.

21-1909 Refusal to file document; appeal.

(a) If the Secretary of State refuses to file a document delivered for filing to the Secretary of State's office, the domestic or foreign corporation may appeal the refusal to the district court of Lancaster County. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation for the refusal to file.

(b) The district court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 1996, LB 681, § 9.

21-1910 Filed document; evidentiary effect.

A certificate attached to a copy of a document bearing the Secretary of State's signature (which may be in facsimile) and the seal of this state is conclusive evidence that the original document is on file with the Secretary of State.

Source: Laws 1996, LB 681, § 10.

21-1911 Certificate of existence.

(a) Any person may apply to the Secretary of State to furnish a certificate of existence for a domestic or foreign corporation.

(b) The certificate of existence shall set forth:

(1) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(2) That (i) the domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual or (ii) the foreign corporation is authorized to transact business in this state;

(3) That all fees, taxes, and penalties owed to this state have been paid, if (i) payment is reflected in the records of the Secretary of State and (ii) nonpayment affects the good standing of the domestic or foreign corporation;

(4) That its most recent biennial report required by section 21-19,172 has been delivered to the Secretary of State; and

(5) That articles of dissolution have not been filed.

(c) Subject to any qualification stated in the certificate, a certificate of existence issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in this state.

Source: Laws 1996, LB 681, § 11.

21-1912 Signing false document; penalty.

(a) A person commits an offense by signing a document such person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(b) Any person who violates this section is guilty of a Class I misdemeanor.

Source: Laws 1996, LB 681, § 12.

21-1913 Secretary of State; powers.

The Secretary of State has the power reasonably necessary to perform the duties required of his or her office by the Nebraska Nonprofit Corporation Act.

Source: Laws 1996, LB 681, § 13.

21-1914 Terms, defined.

For purposes of the Nebraska Nonprofit Corporation Act, unless the context otherwise requires:

(1) Approved by (or approval by) the members means approved or ratified by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum) or by a written ballot, or written consent in conformity with the act or by the affirmative vote, written ballot, or written consent of such greater proportion, including the votes of all the members of any class, unit, or grouping as may be provided in the articles, bylaws, or the act for any specified member action;

(2) Articles of incorporation or articles include amended and restated articles of incorporation and articles of merger;

(3) Board or board of directors means the board of directors except that no person or group of persons are the board of directors because of powers delegated to that person or group pursuant to section 21-1968;

(4) Bylaws means the code or codes of rules (other than the articles) adopted pursuant to the act for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated;

(5) Class means a group of memberships which have the same rights with respect to voting, dissolution, redemption, and transfer. For purposes of this section, rights shall be considered the same if they are determined by a formula applied uniformly;

(6) Corporation means a public benefit, a mutual benefit, or a religious corporation;

(7) Delegate means a person elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters;

(8) Deliver includes mail;

(9) Director means an individual, designated in the articles or bylaws or elected by the incorporators, and his or her successor and an individual elected or appointed by any other name or title to act as a member of the board;

(10) Distribution means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers;

(11) Domestic corporation means a corporation;

(12) Effective date of notice has the same meaning as in section 21-1915;

(13) Employee does not include an officer or director who is not otherwise employed by the corporation;

(14) Entity includes corporation and foreign corporation; business corporation and foreign business corporation; profit and nonprofit unincorporated association; corporation sole; business trust, estate, partnership, limited liability company, registered limited liability partnership, trust, and two or more persons having a joint or common economic interest; state or the United States; and foreign government;

(15) File, filed, or filing means filed in the office of the Secretary of State;

(16) Foreign corporation means a corporation organized under a law other than the law of this state which would be a nonprofit corporation if formed under the laws of this state;

(17) Governmental subdivision includes authority, county, district, and municipality;

(18) Individual includes the estate of an incompetent individual;

(19) Member means (without regard to what a person is called in the articles or bylaws) any person or persons who on more than one occasion, pursuant to a provision of a corporation's articles or bylaws, have the right to vote for the election of a director or directors. The definition of member does not apply to a corporation created for the collection of assessments under federally mandated programs if the articles of such corporation provide that the corporation shall not have members. A person is not a member by virtue of any of the following:

(i) Any rights such person has as a delegate;

(ii) Any rights such person has to designate a director or directors; or

(iii) Any rights such person has as a director;

(20) Membership means the rights and obligations a member or members have pursuant to a corporation's articles, bylaws, and the act;

(21) Mutual benefit corporation means a domestic corporation which is formed as a mutual benefit corporation pursuant to sections 21-1920 to 21-1926 or is required to be a mutual benefit corporation pursuant to section 21-19,177;

(22) Notice has the same meaning as in section 21-1915;

(23) Person includes any individual or entity;

(24) Principal office means the office (in or out of this state) so designated in the biennial report filed pursuant to section 21-19,172 where the principal offices of a domestic or foreign corporation is located;

(25) Proceeding includes civil, criminal, administrative, and investigatory actions;

(26) Public benefit corporation means a domestic corporation which is formed as a public benefit corporation pursuant to sections 21-1920 to 21-1926 or is required to be a public benefit corporation pursuant to section 21-19,177;

(27) Record date means the date established under sections 21-1938 to 21-1950 or 21-1951 to 21-1967 on which a corporation determines the identity of its members for the purposes of the act;

(28) Religious corporation means a domestic corporation which is formed as a religious corporation pursuant to sections 21-1920 to 21-1926 or is required to be a religious corporation pursuant to section 21-19,177;

(29) Secretary means the corporate officer to whom the board of directors has delegated responsibility under subsection (b) of section 21-1990 for custody of the minutes of the directors' and members' meetings and for authenticating the records of the corporation;

(30) State, when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory and insular possession (and their agencies and governmental subdivisions) of the United States;

(31) United States includes district, authority, bureau, commission, department, and any other agency of the United States;

(32) Vote includes authorization by written ballot and written consent; and

(33) Voting power means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote which is contingent upon the happening of a condition or event that has not occurred at the time. Where a class is entitled to vote as a class for directors, the determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

Source: Laws 1996, LB 681, § 14; Laws 1997, LB 285, § 1.

21-1915 Notice.

(a) Notice may be oral or written.

(b) Notice may be communicated in person, by telephone, by telegraph, by teletype, by other form of wire or wireless communication, or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, by radio, by television, or by other form of public broadcast communication.

(c) Oral notice is effective when communicated if communicated in a comprehensible manner.

(d) Written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received;

(2) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed correctly addressed and with first-class postage affixed;

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; or

(4) Thirty days after its deposit in the United States mail, as evidenced by the postmark, if mailed correctly addressed and with other than first class, registered or certified postage affixed.

(e) Written notice is correctly addressed to a member of a domestic or foreign corporation if addressed to the member's address shown in the corporation's current list of members.

(f) A written notice or report delivered as part of a newsletter, magazine, or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's address shown in the corporation's current list of members, or in the case of members who are residents of the same household and who have the same address in the corporation's current list of members, if addressed or delivered to one of such members at the address appearing on the current list of members.

(g) Written notice is correctly addressed to a domestic or foreign corporation (authorized to transact business in this state), other than in its capacity as a member, if addressed to its registered agent or to its secretary at its principal office shown in its most recent biennial report or, in the case of a foreign corporation that has not yet delivered a biennial report, in its application for a certificate of authority.

(h) If any other provision of the Nebraska Nonprofit Corporation Act prescribes notice requirements for particular circumstances, such as subsection (b)

of section 21-1955, those requirements govern. If articles or bylaws prescribe notice requirements not inconsistent with this section or other provisions of the Nebraska Nonprofit Corporation Act, those requirements govern.

Source: Laws 1996, LB 681, § 15.

21-1916 Private foundations; requirements.

Except when otherwise determined by a court of competent jurisdiction, a corporation that is a private foundation as defined in section 509(a) of the Internal Revenue Code:

(a) Shall distribute such amounts for each taxable year at such time and in such manner as not to subject the corporation to tax under section 4942 of the Internal Revenue Code;

(b) Shall not engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code;

(c) Shall not retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code;

(d) Shall not make any investments subjecting it to taxation under section 4944 of the Internal Revenue Code; and

(e) Shall not make any taxable expenditures as defined in section 4945(d) of the Internal Revenue Code.

Source: Laws 1996, LB 681, § 16; Laws 1998, LB 1015, § 1.

21-1917 Meetings and votes; court order.

(a) If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws, or the Nebraska Nonprofit Corporation Act, then upon petition of a director, officer, delegate, member, or the Attorney General, the district court may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authorized in such a manner it finds fair and equitable under the circumstances.

(b) The district court shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws and the act, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section the district court may determine who the members or directors are.

(c) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or the act.

(d) Whenever practical, any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section. An order under this section may also authorize the

obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale of assets.

(e) Any meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to an order issued under this section, and that complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and the act.

Source: Laws 1996, LB 681, § 17.

21-1918 Attorney General; notice; powers.

(a) The Attorney General shall be given notice of the commencement of any proceeding that the Nebraska Nonprofit Corporation Act authorizes him or her to bring but that has been commenced by another person.

(b) Whenever any provision of the act requires that notice be given to the Attorney General before or after commencing a proceeding or permits him or her to commence a proceeding:

(1) If no proceeding has been commenced, the Attorney General may take appropriate action including, but not limited to, seeking injunctive relief; or

(2) If a proceeding has been commenced by a person other than the Attorney General, the Attorney General, as of right, may intervene in such proceeding.

Source: Laws 1996, LB 681, § 18.

21-1919 Religious corporations; constitutional protections.

If religious doctrine governing the affairs of a religious corporation is inconsistent with the provisions of the Nebraska Nonprofit Corporation Act on the same subject, the religious doctrine shall control to the extent required by the Constitution of the United States or the Constitution of the State of Nebraska or both.

Source: Laws 1996, LB 681, § 19.

(b) ORGANIZATION

21-1920 Incorporators.

One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing.

Source: Laws 1996, LB 681, § 20.

21-1921 Articles of incorporation.

(a) The articles of incorporation shall set forth:

(1) A corporate name for the corporation that satisfies the requirements of section 21-1931;

(2) One of the following statements:

(i) This corporation is a public benefit corporation;

(ii) This corporation is a mutual benefit corporation; or

(iii) This corporation is a religious corporation;

(3) The street address of the corporation's initial registered office and the name of its initial registered agent at that office;

(4) The name and street address of each incorporator;

(5) Whether or not the corporation will have members; and

(6) Provisions not inconsistent with law regarding the distribution of assets on dissolution.

(b) The articles of incorporation may set forth:

(1) The purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;

(2) The names and street addresses of the individuals who are to serve as the initial directors;

(3) Provisions not inconsistent with law regarding:

(i) Managing and regulating the affairs of the corporation;

(ii) Defining, limiting, and regulating the powers of the corporation, its board of directors, and members (or any class of members); and

(iii) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members.

(4) Any provision that under the Nebraska Nonprofit Corporation Act is required or permitted to be set forth in the bylaws.

(c) Each incorporator and director named in the articles must sign the articles.

(d) The articles of incorporation need not set forth any of the corporate powers enumerated in the act.

Source: Laws 1996, LB 681, § 21.

21-1922 Incorporation.

(a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(b) The Secretary of State's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

Source: Laws 1996, LB 681, § 22.

21-1923 Liability for preincorporation transactions.

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under the Nebraska Nonprofit Corporation Act, are jointly and severally liable for all liabilities created while so acting.

Source: Laws 1996, LB 681, § 23.

21-1924 Organization of corporation.

(a) After incorporation:

(1) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing offi-

cers, adopting bylaws, and carrying on any other business brought before the meeting; or

(2) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the corporation; or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by the Nebraska Nonprofit Corporation Act to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or out of this state in accordance with section 21-1981.

Source: Laws 1996, LB 681, § 24.

21-1925 Bylaws.

(a) The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.

(b) The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

Source: Laws 1996, LB 681, § 25.

21-1926 Emergency bylaws and powers.

(a) Unless the articles provide otherwise the directors of a corporation may adopt, amend, or repeal bylaws to be effective only in an emergency defined in subsection (d) of this section. The emergency bylaws, which are subject to amendment or repeal by the members, may provide special procedures necessary for managing the corporation during the emergency, including:

(1) How to call a meeting of the board;

(2) Quorum requirements for the meeting; and

(3) Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

(1) Binds the corporation; and

(2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Source: Laws 1996, LB 681, § 26.

(c) PURPOSES AND POWERS

21-1927 Purposes.

(a)(1) Every corporation incorporated under the Nebraska Nonprofit Corporation Act has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.

(2) A corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under the act only if incorporation under the act is not prohibited by the other statute. The corporation shall be subject to all limitations of the other statute.

(b) Corporations may be incorporated under the Nebraska Nonprofit Corporation Act for any one or more of, but not limited to, the following lawful purposes: Charitable; benevolent; eleemosynary; educational; civic; patriotic; political; religious; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; and professional, commercial, industrial, or trade association. Corporations may also be incorporated under the act for the purpose of providing for, erecting, owning, leasing, furnishing, and managing any building, hall, dormitory or apartments, lands, or grounds for the use or benefit in whole or in part of any governmental, religious, social, educational, scientific, fraternal, or charitable society or societies, body or bodies, institution or institutions, incorporated or unincorporated, or for the purpose of holding property of any nature in trust for such society, body, or institution or for the purpose of assisting any governmental body in obtaining grants from the federal government, the performance of any requirements necessary to obtain a federal grant, or carrying out the purpose for which a federal grant is obtained.

Source: Laws 1996, LB 681, § 27; Laws 1999, LB 271, § 1.

21-1928 General powers.

Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, the power:

(1) To sue and be sued, complain, and defend in its corporate name;

(2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing or in any other manner reproducing it;

(3) To make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this state, for regulating and managing the affairs of the corporation;

(4) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with, shares or other interests in, or obligations of, any entity;

(7) To make contracts and guaranties, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by section 21-1988;

(9) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) To conduct its activities, locate offices, and exercise the powers granted by the Nebraska Nonprofit Corporation Act within or without this state;

(11) To elect or appoint directors, officers, employees, and agents of the corporation, define their duties, and fix their compensation;

(12) To pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) To make donations not inconsistent with law for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interest;

(14) To impose dues, assessments, admission, and transfer fees upon its members;

(15) To establish conditions for admission of members, admit members, and issue memberships;

(16) To carry on a business; and

(17) To do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

Source: Laws 1996, LB 681, § 28.

21-1929 Emergency powers.

(a) In anticipation of or during an emergency defined in subsection (d) of this section, the board of directors of a corporation may:

(1) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officer to do so.

(b) During an emergency defined in subsection (d) of this section, unless emergency bylaws provide otherwise:

(1) Notice of a meeting of the board of directors need be given only to those directors it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(2) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the corporation:

(1) Binds the corporation; and

(2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Source: Laws 1996, LB 681, § 29.

21-1930 Ultra vires.

(a) Except as provided in subsection (b) of this section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act when a third party has not acquired rights. The proceeding may be brought by the Attorney General, a director, or by a member or members in a derivative proceeding.

(c) A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee, or agent of the corporation. The proceeding may be brought by a director, the corporation (directly, derivatively, or through a receiver, a trustee, or other legal representative), or in the case of a public benefit corporation, by the Attorney General.

Source: Laws 1996, LB 681, § 30.

(d) NAMES

21-1931 Corporate name.

(a) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 21-1927 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name shall not be the same as or deceptively similar to, upon the records of the Secretary of State, any of the names referenced in subdivisions (b)(1) through (5) of this section:

(1) The corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(2) A corporate name reserved or registered under section 21-1932, 21-1933, 21-2029, or 21-2030;

(3) The fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable;

(4) A trade name registered in this state pursuant to sections 87-208 to 87-220; and

(5) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(c) A corporation may apply to the Secretary of State for authorization to use a name that is deceptively similar to, upon the Secretary of State's records, one or more of the names described in subsection (b) of this section. The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation or business entity consents to the use in writing; or

(2) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign business or nonprofit corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to do business in this state and the proposed user corporation:

(1) Has merged with the other corporation or business entity;

(2) Has been formed by reorganization of the other corporation or business entity; or

(3) Has acquired all or substantially all of the assets, including the name, of the other corporation or business entity.

(e) The Nebraska Nonprofit Corporation Act does not control the use of fictitious names.

Source: Laws 1996, LB 681, § 31; Laws 1997, LB 44, § 2; Laws 1997, LB 453, § 1; Laws 2003, LB 464, § 1.

21-1932 Reserved name.

(a) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. Upon finding that the corporate name applied for is available, the Secretary of State shall reserve the name for the applicant's exclusive use for a nonrenewable one-hundred-twenty-day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

Source: Laws 1996, LB 681, § 32.

21-1933 Registered name.

(a) A foreign corporation may register its corporate name, or its corporate name with any change required by section 21-19,151, if the name is not the same as or deceptively similar to, upon the records of the Secretary of State:

(1) The corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(2) A corporate name reserved under section 21-1932 or 21-2029 or registered under this section; and

(3) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(b) A foreign corporation registers its corporate name, or its corporate name with any change required by section 21-19,151, by delivering to the Secretary of State an application:

(1) Setting forth its corporate name, or its corporate name with any change required by section 21-19,151, the state or country and date of its incorporation, and a brief description of the nature of the activities in which it is engaged; and

(2) Accompanied by a certificate of existence (or a document of similar import) from the state or country of incorporation. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is filed in this state.

(c) The corporate name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (b) of this section, between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation or other business entity thereafter incorporated under the Nebraska Nonprofit Corporation Act or authorized to transact business in this state or by another foreign corporation or business entity thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation or business entity qualifies or consents to the qualification of another foreign corporation or business entity under the registered name.

Source: Laws 1996, LB 681, § 33; Laws 1997, LB 44, § 3; Laws 2003, LB 464, § 2.

(e) OFFICE AND AGENT

21-1934 Registered office; registered agent.

Each corporation must continuously maintain in this state:

(1) A registered office with the same address as that of the registered agent; and

(2) A registered agent, who may be:

(i) An individual who resides in this state and whose office is identical with the registered office;

(ii) A domestic business or nonprofit corporation whose office is identical with the registered office; or

(iii) A foreign business or nonprofit corporation authorized to transact business in this state whose office is identical with the registered office.

Source: Laws 1996, LB 681, § 34.

21-1935 Change of registered office or registered agent.

(a) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) The name of the corporation;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of the new registered office;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and

(6) That after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(b) If the street address of a registered agent's office is changed, the registered agent may change the street address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and by signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

Source: Laws 1996, LB 681, § 35.

21-1936 Resignation of registered agent.

(a) A registered agent may resign as the registered agent by signing and delivering to the Secretary of State the original and two exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) After filing the statement the Secretary of State shall mail one copy to the registered office (if not discontinued) and the other copy to the corporation at its principal office as shown in the most recent biennial report filed pursuant to section 21-19,172.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

Source: Laws 1996, LB 681, § 36.

21-1937 Service on corporation.

(a) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(b) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office shown in the most recent biennial report filed pursuant to section 21-19,172. Service is perfected under this subsection on the earliest of:

(1) The date the corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the corporation; or

(3) Five days after its deposit in the United States mail, if mailed and correctly addressed with first-class postage affixed.

(c) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

Source: Laws 1996, LB 681, § 37.

(f) MEMBERS AND MEMBERSHIPS

21-1938 Admission of members.

(a) The articles or bylaws may establish criteria or procedures for admission of members.

(b) No person shall be admitted as a member without his or her consent.

Source: Laws 1996, LB 681, § 38.

21-1939 Consideration.

Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

Source: Laws 1996, LB 681, § 39.

21-1940 No requirement of members.

A corporation is not required to have members.

Source: Laws 1996, LB 681, § 40.

21-1941 Differences in rights and obligations.

All members shall have the same rights and obligations with respect to voting, dissolution, redemption, and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations. All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.

Source: Laws 1996, LB 681, § 41.

21-1942 Transfers.

(a) Except as set forth in or authorized by the articles or bylaws, no member of a mutual benefit corporation may transfer a membership or any right arising therefrom.

(b) No member of a public benefit or religious corporation may transfer a membership or any right arising therefrom.

(c) When transfer rights have been provided, no restriction on them shall be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

Source: Laws 1996, LB 681, § 42.

21-1943 Member's liability to third parties.

A member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.

Source: Laws 1996, LB 681, § 43.

21-1944 Member's liability for dues, assessments, and fees.

A member may become liable to the corporation for dues, assessments, or fees. However, an article or bylaw provision or a resolution adopted by the

board authorizing or imposing dues, assessments, or fees does not, of itself, create liability.

Source: Laws 1996, LB 681, § 44.

21-1945 Creditor's action against member.

(a) No proceeding may be brought by a creditor to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless such proceeding would be useless.

(b) All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection (a) of this section to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in such proceeding.

Source: Laws 1996, LB 681, § 45.

21-1946 Resignation.

(a) A member may resign at any time.

(b) The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to resignation.

Source: Laws 1996, LB 681, § 46.

21-1947 Termination, expulsion, and suspension.

(a) No member of a public benefit or mutual benefit corporation may be expelled or suspended, and no membership or memberships in such corporations may be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(b) A procedure is fair and reasonable when either:

(1) The articles or bylaws set forth a procedure that provides:

(i) Not less than fifteen days' prior written notice of the expulsion, suspension, or termination and the reasons therefor; and

(ii) An opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, suspension, or termination not take place; or

(2) It is fair and reasonable taking into consideration all of the relevant facts and circumstances.

(c) Any written notice given by mail must be given by first-class or certified mail sent to the last-known address of the member shown on the corporation's records.

(d) Any proceeding challenging an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension, or termination.

(e) A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made prior to expulsion or suspension.

Source: Laws 1996, LB 681, § 47.

21-1948 Purchase of memberships.

(a) A public benefit or religious corporation may not purchase any of its memberships or any right arising therefrom.

(b) A mutual benefit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws, but no payment shall be made in violation of sections 21-19,127 and 21-19,128.

Source: Laws 1996, LB 681, § 48.

21-1949 Derivative suits.

(a) A proceeding may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor by: (i) Any member or members having five percent or more of the voting power or by fifty members, whichever is less; or (ii) any director.

(b) In any such proceeding, each complainant shall be a member or director at the time of bringing the proceeding.

(c) A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity the demand made, if any, to obtain action by the directors and either why the complainants could not obtain the action or why they did not make the demand. If a demand for action was made and the corporation's investigation of the demand is in progress when the proceeding is filed, the district court may stay the proceeding until the investigation is completed.

(d) On termination of the proceeding the district court may require the complainants to pay any defendant's reasonable expenses (including counsel fees) incurred in defending the suit if it finds that the proceeding was commenced frivolously or in bad faith.

(e) If the proceeding on behalf of the corporation results in the corporation taking some action requested by the complainants or otherwise was successful, in whole or in part, or if anything was received by the complainants as the result of a judgment, compromise, or settlement of an action or claim, the district court may award the complainants reasonable expenses (including counsel fees).

(f) The complainants shall notify the Attorney General within ten days after commencing any proceeding under this section if the proceeding involves a public benefit corporation or assets held in charitable trust by a mutual benefit corporation.

Source: Laws 1996, LB 681, § 49.

21-1950 Delegates.

(a) A corporation may provide in its articles or bylaws for delegates having some or all of the authority of members.

(b) The articles or bylaws may set forth provisions relating to:

(1) The characteristics, qualifications, rights, limitations, and obligations of delegates including their selection and removal;

(2) Calling, noticing, holding, and conducting meetings of delegates; and

(3) Carrying on corporate activities during and between meetings of delegates.

Source: Laws 1996, LB 681, § 50.

(g) MEMBERS' MEETINGS AND VOTING

21-1951 Annual and regular meetings.

(a) A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

(b) A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

(c) Annual and regular membership meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual and regular meetings shall be held at the corporation's principal office. Unless the articles or bylaws provide otherwise, members may participate in an annual or regular meeting of the members or conduct the meeting through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in a meeting by this means is deemed to be present at the meeting.

(d) At the annual meeting:

(1) The president and chief financial officer shall report on the activities and financial condition of the corporation; and

(2) The members shall consider and act upon such other matters as may be raised consistent with the notice requirements of section 21-1955 and subsection (b) of section 21-1962.

(e) At regular meetings the members shall consider and act upon such matters as may be raised consistent with (i) the notice requirements of section 21-1955 and (ii) subsection (b) of section 21-1962.

(f) The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

Source: Laws 1996, LB 681, § 51.

21-1952 Special meeting.

(a) A corporation with members shall hold a special meeting of members:

(1) On call of its board or the person or persons authorized to do so by the articles or bylaws; or

(2) Except as provided in the articles or bylaws of a religious corporation if the holders of at least five percent of the voting power of any corporation sign, date, and deliver to any corporate officer one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(b) The close of business on the thirtieth day before delivery of the demand or demands for a special meeting to any corporate officer is the record date for

the purpose of determining whether the five percent requirement of subsection (a) of this section has been met.

(c) If a notice for a special meeting demanded under subdivision (a)(2) of this section is not given pursuant to section 21-1955 within thirty days after the date the written demand or demands are delivered to a corporate officer, regardless of the requirements of subsection (d) of this section, a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to section 21-1955.

(d) Special meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office. Unless the articles or bylaws provide otherwise, members may participate in a special meeting of the members or conduct the meeting through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in a meeting by this means is deemed to be present at the meeting.

(e) Only those matters that are within the purpose or purposes described in the meeting notice required by section 21-1955 may be conducted at a special meeting of members.

Source: Laws 1996, LB 681, § 52.

21-1953 Court-ordered meeting.

(a) The district court of the county where a corporation's principal office (or, if none in this state, its registered office) is located may summarily order a meeting to be held:

(1) On application of any member or other person entitled to participate in an annual or regular meeting, and in the case of a public benefit corporation, the Attorney General, if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting; or

(2) On application of any member or other person entitled to participate in a regular meeting, and in the case of a public benefit corporation, the Attorney General, if a regular meeting is not held within forty days after the date it was required to be held; or

(3) On application of a member who signed a demand for a special meeting valid under section 21-1952, a person or persons entitled to call a special meeting, and, in the case of a public benefit corporation, the Attorney General, if:

(i) Notice of the special meeting was not given within thirty days after the date the demand was delivered to a corporate officer; or

(ii) The special meeting was not held in accordance with the notice.

(b) The district court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(c) If the district court orders a meeting, it may also order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order.

Source: Laws 1996, LB 681, § 53.

21-1954 Action by written consent.

(a) Unless limited or prohibited by the articles or bylaws, action required or permitted by the Nebraska Nonprofit Corporation Act to be approved by the members may be approved without a meeting of members if the action is approved by members holding at least eighty percent of the voting power. The action must be evidenced by one or more written consents describing the action taken, signed by those members representing at least eighty percent of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise determined under section 21-1953 or 21-1957, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (a) of this section.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document filed with the Secretary of State.

(d) Written notice of member approval pursuant to this section shall be given to all members who have not signed the written consent. If written notice is required, member approval pursuant to this section shall be effective ten days after such written notice is given.

Source: Laws 1996, LB 681, § 54.

21-1955 Notice of meeting.

(a) A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

(b) Any notice that conforms to the requirements of subsection (c) of this section is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered. Notice of matters referred to in subdivision (c)(2) of this section, however, must be given as provided in subsection (c) of this section.

(c) Notice is fair and reasonable if:

(1) The corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members no fewer than ten (or if notice is mailed by other than first-class or registered mail, thirty) nor more than sixty days before the meeting date;

(2) Notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the members under section 21-1987, 21-19,102, 21-19,107, 21-19,114, 21-19,121, 21-19,126, 21-19,129, or 21-19,130; and

(3) Notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(d) Unless the bylaws require otherwise, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time or place is announced at the meeting before adjournment. If a new record date for the

adjourned meeting is or must be fixed under section 21-1957, however, notice of the adjourned meeting must be given under this section to the members of record as of the new record date.

(e) When giving notice of an annual, regular, or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if: (1) Requested in writing to do so by a person entitled to call a special meeting; and (2) the request is received by the secretary or president of the corporation at least ten days before the corporation gives notice of the meeting.

Source: Laws 1996, LB 681, § 55.

21-1956 Waiver of notice.

(a) A member may waive any notice required by the Nebraska Nonprofit Corporation Act, the articles, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A member's attendance at a meeting:

(1) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting;

(2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

Source: Laws 1996, LB 681, § 56.

21-1957 Record date; determining members entitled to notice and vote.

(a) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members at the close of business on the business day preceding the day on which notice is given, or if notice is waived, at the close of business on the business day preceding the day on which the meeting is held, are entitled to notice of the meeting.

(b) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

(c) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing such a record date, the board may fix in advance such a record date. If no such record date is fixed, members at the close of business on the day on which the board adopts the resolution relating thereto, or the sixtieth day prior to the date of such other action, whichever is later, are entitled to exercise such rights.

(d) A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of members occurs.

(e) A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than seventy days after the record date for determining members entitled to notice of the original meeting.

(f) If the district court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting.

Source: Laws 1996, LB 681, § 57.

21-1958 Action by written ballot.

(a) Unless prohibited or limited by the articles or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

(b) A written ballot shall:

(1) Set forth each proposed action; and

(2) Provide an opportunity to vote for or against each proposed action.

(c) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(d) All solicitations for votes by written ballot shall:

(1) Indicate the number of responses needed to meet the quorum requirements;

(2) State the percentage of approvals necessary to approve each matter other than election of directors; and

(3) Specify the time by which a ballot must be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked.

Source: Laws 1996, LB 681, § 58.

21-1959 Members' list for meeting.

(a) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but who are not entitled to notice of the meeting. This list shall be prepared on the same basis as and be part of the list of members.

(b) The list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning two business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or attorney is entitled on written demand to inspect and, subject to the limitations of subsection (c) of section 21-19,166 and section 21-19,169, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(c) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or a member's attorney is entitled to inspect the list at any time during the meeting or upon adjournment.

(d) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting (or copy the list as permitted by subsection (b) of this section), the district court of the county where a corporation's principal office (or if none in this state, its registered office) is located, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete and may order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order.

(e) Unless a written demand to inspect and copy a membership list has been made under subsection (b) of this section prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

(f) The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy any corporate record.

Source: Laws 1996, LB 681, § 59.

21-1960 Voting entitlement generally.

(a) Unless the articles or bylaws provide otherwise, each member is entitled to one vote on each matter voted on by the members.

(b) Unless the articles or bylaws provide otherwise, if a membership stands of record in the names of two or more persons, their acts with respect to voting shall have the following effect:

(1) If only one votes, such act binds all; and

(2) If more than one votes, the vote shall be divided on a pro rata basis.

Source: Laws 1996, LB 681, § 60.

21-1961 Quorum requirements.

(a) Unless the Nebraska Nonprofit Corporation Act, the articles, or bylaws provide for a higher or lower quorum, ten percent of the votes entitled to be cast on a matter must be represented at a meeting of members to constitute a quorum on that matter.

(b) A bylaw amendment to decrease the quorum for any member action may be approved by the members or, unless prohibited by the bylaws, by the board.

(c) A bylaw amendment to increase the quorum required for any member action must be approved by the members.

(d) Unless one-third or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice.

Source: Laws 1996, LB 681, § 61.

21-1962 Voting requirements.

(a) Unless the Nebraska Nonprofit Corporation Act, the articles, or the bylaws require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes represented and voting (which affirmative votes also constitute a majority of the required quorum) is the act of the members.

(b) A bylaw amendment to increase or decrease the vote required for any member action must be approved by the members.

Source: Laws 1996, LB 681, § 62.

21-1963 Proxies.

(a) Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an attorney in fact.

(b) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a different period is expressly provided in the appointment form. No proxy shall be valid for more than three years from its date of execution.

(c) An appointment of a proxy is revocable by the member.

(d) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(e) Appointment of a proxy is revoked by the person appointing the proxy:

(1) Attending any meeting and voting in person; or

(2) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(f) Subject to section 21-1966 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

Source: Laws 1996, LB 681, § 63.

21-1964 Cumulative voting for directors.

(a) If the articles or bylaws provide for cumulative voting by members, members may so vote, by multiplying the number of votes the members are

entitled to cast by the number of directors for whom they are entitled to vote, and cast the product for a single candidate or distribute the product among two or more candidates.

(b) Cumulative voting is not authorized at a particular meeting unless:

(1) The meeting notice or statement accompanying the notice states that cumulative voting will take place; or

(2) A member gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes, and if one member gives this notice all other members participating in the election are entitled to cumulate their votes without giving further notice.

(c) A director elected by cumulative voting may be removed by the members without cause if the requirements of section 21-1975 are met unless the votes cast against removal, or not consenting in writing to such removal, would be sufficient to elect such director if voted cumulatively at an election at which the same total number of votes were cast (or, if such action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.

(d) Members may not cumulatively vote if the directors and members are identical.

Source: Laws 1996, LB 681, § 64.

Cross References

Cumulative voting for directors, see Chapter XII, article 1, Constitution of Nebraska.

21-1965 Other methods of electing directors.

A corporation may provide in its articles or bylaws for the election of directors by members or delegates (1) on the basis of chapter or other organizational unit, (2) by region or other geographic unit, (3) by preferential voting, or (4) by any other reasonable method.

Source: Laws 1996, LB 681, § 65.

Cross References

Cumulative voting for directors, see Chapter XII, article 1, Constitution of Nebraska.

21-1966 Corporation's acceptance of votes.

(a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

(b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:

(1) The member is an entity and the name signed purports to be that of an officer or agent of the entity;

(2) The name signed purports to be that of an attorney in fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment;

(3) Two or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders; and

(4) In the case of a mutual benefit corporation:

(i) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(ii) The name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

(c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

Source: Laws 1996, LB 681, § 66.

21-1967 Voting agreements.

(a) Two or more members may provide for the manner in which they will vote by signing an agreement for that purpose. Such agreements may be valid for a period of up to ten years. For public benefit corporations such agreements must have a reasonable purpose not inconsistent with the corporation's public or charitable purposes.

(b) A voting agreement created under this section is specifically enforceable.

Source: Laws 1996, LB 681, § 67.

(h) DIRECTORS AND OFFICERS

21-1968 Requirement for and duties of board of directors.

(a) Each corporation must have a board of directors.

(b) Except as provided in the Nebraska Nonprofit Corporation Act or subsection (c) of this section, all corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board.

(c) The articles may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities.

Source: Laws 1996, LB 681, § 68.

21-1969 Qualifications of directors.

All directors must be individuals. The articles or bylaws may prescribe other qualifications for directors.

Source: Laws 1996, LB 681, § 69.

21-1970 Number of directors.

(a) A board of directors must consist of three or more individuals, with the number specified in or fixed in accordance with the articles or bylaws.

(b) The number of directors may be increased or decreased (but to no fewer than three) from time to time by amendment to or in the manner prescribed in the articles or bylaws.

Source: Laws 1996, LB 681, § 70.

21-1971 Election, designation, and appointment of directors.

(a) If the corporation has members, all the directors (except the initial directors) shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election or provide that some of the directors are appointed by some other person or designated.

(b) If the corporation does not have members, all the directors (except the initial directors) shall be elected, appointed, or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors (other than the initial directors) shall be elected by the board.

Source: Laws 1996, LB 681, § 71.

21-1972 Terms of directors generally.

(a) The articles or bylaws must specify the terms of directors. Except for designated or appointed directors, the terms of directors may not exceed five years. In the absence of any term specified in the articles or bylaws, the term of each director shall be one year. Directors may be elected for successive terms.

(b) A decrease in the number of directors or term of office does not shorten an incumbent director's term.

(c) Except as provided in the articles or bylaws:

(1) The term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and

(2) The term of a director filling any other vacancy expires at the end of the unexpired term that such director is filling.

(d) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated, or appointed and qualifies, or until there is a decrease in the number of directors.

Source: Laws 1996, LB 681, § 72.

21-1973 Staggered terms for directors.

The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the several groups need not be uniform.

Source: Laws 1996, LB 681, § 73.

21-1974 Resignation of directors.

(a) A director may resign at any time by delivering written notice to the board of directors, its presiding officer, or to the president or secretary.

(b) A resignation is effective when the notice is effective unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

Source: Laws 1996, LB 681, § 74.

21-1975 Removal of directors elected by members or directors.

(a) The members may remove one or more directors elected by them without cause.

(b) If a director is elected by a class, chapter, or other organizational unit or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit, or grouping.

(c) Except as provided in subsection (i) of this section, a director may be removed under subsection (a) or (b) of this section only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(d) If cumulative voting is authorized, a director may not be removed if the number of votes (or if the director was elected by a class, chapter, unit, or grouping of members, the number of votes of that class, chapter, unit, or grouping) sufficient to elect the director under cumulative voting is voted against the director's removal.

(e) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director. The meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

(f) In computing whether a director is protected from removal under subsections (b) through (d) of this section, it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.

(g) An entire board of directors may be removed under subsections (a) through (e) of this section.

(h) A director elected by the board may be removed without cause by the vote of two-thirds of the directors then in office or such greater number as is set forth in the articles or bylaws. A director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not the board.

(i) If, at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the

specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

(j) The articles or bylaws of a religious corporation may:

(1) Limit the application of this section; and

(2) Set forth the vote and procedures by which the board or any person may remove with or without cause a director elected by the members or the board.

Source: Laws 1996, LB 681, § 75.

21-1976 Removal of designated or appointed directors.

(a) A designated director may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(b)(1) An appointed director may be removed without cause by the person appointing the director except as otherwise provided in the articles or bylaws;

(2) The person removing the appointed director shall do so by giving written notice of the removal to the appointed director and either the presiding officer of the board or the corporation's president or secretary; and

(3) A removal of an appointed director is effective when the notice is effective unless the notice specifies a future effective date.

Source: Laws 1996, LB 681, § 76.

21-1977 Removal of directors by judicial proceeding.

(a) The district court of the county where a corporation's principal office (or, if none in this state, its registered office) is located may remove any director of the corporation from office in a proceeding commenced either by the corporation, its members holding at least ten percent of the voting power of any class, or the Attorney General in the case of a public benefit corporation, if it finds that (1)(i) the director engaged in fraudulent or dishonest conduct, (ii) the director engaged in a gross abuse of authority or discretion, with respect to the corporation, or (iii) a final judgment has been entered finding that the director has violated a duty set forth in sections 21-1986 to 21-1989 and (2) removal is in the best interest of the corporation.

(b) The district court may bar the removed director from serving on the board for a period prescribed by the court.

(c) If members or the Attorney General commence a proceeding under subsection (a) of this section the corporation shall be made a party defendant.

(d) If a public benefit corporation or its members commence a proceeding under subsection (a) of this section, they shall give the Attorney General written notice of the proceeding.

(e) The articles or bylaws of a religious corporation may limit or prohibit the application of this section.

Source: Laws 1996, LB 681, § 77.

21-1978 Vacancy on board.

(a) Unless the articles or bylaws provide otherwise, and except as provided in subsections (b) and (c) of this section, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) The members, if any, may fill the vacancy. If the vacant office was held by a director elected by a class, chapter, or other organizational unit or by region or other geographic grouping, only members of the class, chapter, unit, or grouping are entitled to vote to fill the vacancy if it is filled by the members;

(2) The board of directors may fill the vacancy; or

(3) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(c) If a vacant office was held by a designated director, the vacancy shall be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy may not be filled by the board.

(d) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under subsection (b) of section 21-1974 or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

Source: Laws 1996, LB 681, § 78.

21-1979 Compensation of directors.

Unless the articles or bylaws provide otherwise, a board of directors may fix the compensation of directors.

Source: Laws 1996, LB 681, § 79.

21-1980 Regular and special meetings.

(a) If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting. All other meetings are special meetings.

(b) A board of directors may hold regular or special meetings in or out of this state.

(c) Unless the articles or bylaws provide otherwise, members of the board of directors may participate in a regular or special meeting of the board or conduct the meeting through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Source: Laws 1996, LB 681, § 80.

21-1981 Action without meeting.

(a) Unless the articles or bylaws provide otherwise, action required or permitted by the Nebraska Nonprofit Corporation Act to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

Source: Laws 1996, LB 681, § 81.

21-1982 Call and notice of meeting.

(a) Unless the articles, bylaws, or subsection (c) of this section provide otherwise, regular meetings of the board may be held without notice.

(b) Unless the articles, bylaws, or subsection (c) of this section provide otherwise, special meetings of the board must be preceded by at least two days' notice to each director of the date, time, and place, but not the purpose, of the meeting.

(c) In corporations without members, any board action to remove a director or to approve a matter that would require approval by the members if the corporation had members shall not be valid unless each director is given at least seven days' written notice that the matter will be voted upon at a directors' meeting or unless notice is waived pursuant to section 21-1983.

(d) Unless the articles or bylaws provide otherwise, the presiding officer of the board, the president, or twenty percent of the directors then in office may call and give notice of a meeting of the board.

Source: Laws 1996, LB 681, § 82.

21-1983 Waiver of notice.

(a) A director may at any time waive any notice required by the Nebraska Nonprofit Corporation Act, the articles, or bylaws. Except as provided in subsection (b) of this section, the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or the corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director, upon arriving at the meeting or prior to the vote on a matter not noticed in conformity with the act, the articles, or bylaws, objects to lack of notice and does not thereafter vote for or assent to the objected to action.

Source: Laws 1996, LB 681, § 83.

21-1984 Quorum; voting.

(a) Except as otherwise provided in the Nebraska Nonprofit Corporation Act, the articles, or bylaws, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins. In no event may the articles or bylaws authorize a quorum of fewer than the greater of one-third of the number of directors in office or two directors.

(b) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board unless the act, the articles, or bylaws require the vote of a greater number of directors.

Source: Laws 1996, LB 681, § 84.

21-1985 Committees of the board.

(a) Unless prohibited or limited by the articles or bylaws, a board of directors may create one or more committees of the board and appoint members of the

board to serve on them. Each committee shall have two or more directors who serve at the pleasure of the board.

(b) The creation of a committee and appointment of members to it must be approved by the greater of:

(1) A majority of all the directors in office when the action is taken; or

(2) The number of directors required by the articles or bylaws to take action under section 21-1984.

(c) Sections 21-1980 to 21-1984, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board, shall apply to committees of the board and their members. Unless the articles or bylaws provide otherwise, members of a committee may participate in a meeting of the committee or conduct the meeting through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in a meeting by this means is deemed to be present at the meeting.

(d) To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under section 21-1968.

(e) A committee of the board may not:

(1) Authorize distributions;

(2) Approve or recommend to members the dissolution, the merger, or the sale, pledge, or transfer of all or substantially all of the corporation's assets;

(3) Elect, appoint, or remove directors or fill vacancies on the board or on any of its committees; or

(4) Adopt, amend, or repeal the articles or bylaws.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 21-1986.

Source: Laws 1996, LB 681, § 85.

21-1986 General standards for directors.

(a) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(1) In good faith;

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) In a manner he or she reasonably believes to be in the best interests of the corporation.

(b) In discharging his or her duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence;

(3) A committee of the board of which the director is not a member as to matters within its jurisdiction if the director reasonably believes the committee merits confidence; or

(4) In the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this section unwarranted.

(d) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.

(e) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property.

Source: Laws 1996, LB 681, § 86.

21-1987 Director; conflict of interest.

(a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair at the time it was entered into or is approved as provided in subsection (b) or (c) of this section.

(b) A transaction in which a director of a public benefit or religious corporation has a conflict of interest may be approved:

(1) In advance by the vote of the board of directors or a committee of the board if:

(i) The material facts of the transaction and the director's interest are disclosed or known to the board or committee of the board; and

(ii) The directors approving the transaction in good faith reasonably believe that the transaction is fair to the corporation; or

(2) Before or after it is consummated by obtaining approval of the:

(i) Attorney General; or

(ii) The district court in an action in which the Attorney General is joined as a party.

(c) A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved if:

(1) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved, or ratified the transaction; or

(2) The material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

(d) For purposes of this section, a director of the corporation has an indirect interest in a transaction if (1) another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction or (2) another entity of which the director is a director, officer, or trustee is a party to the transaction.

(e) For purposes of subsections (b) and (c) of this section, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board or on the committee who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subdivision (b)(1) or (c)(1) of this section if the transaction is otherwise approved as provided in subsection (b) or (c) of this section.

(f) For purposes of subdivision (c)(2) of this section, a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction and votes cast by or voted under the control of an entity described in subdivision (d)(1) of this section may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subdivision (c)(2) of this section. The vote of these members, however, is counted in determining whether the transaction is approved under other sections of the Nebraska Nonprofit Corporation Act. A majority of the voting power, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

(g) The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

Source: Laws 1996, LB 681, § 87.

21-1988 Loans to or guaranties for directors and officers.

(a) A corporation may not lend money to or guaranty the obligation of a director or officer of the corporation.

(b) The fact that a loan or guaranty is made in violation of this section does not affect the borrower's liability on the loan.

Source: Laws 1996, LB 681, § 88.

21-1989 Liability for unlawful distributions.

(a) Unless a director complies with the applicable standards of conduct described in section 21-1986, a director who votes for or assents to a distribution made in violation of the Nebraska Nonprofit Corporation Act is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating the act.

(b) A director held liable for an unlawful distribution under subsection (a) of this section is entitled to contribution:

(1) From every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in section 21-1986; and

(2) From each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of the act.

Source: Laws 1996, LB 681, § 89.

21-1990 Required officers.

(a) Unless otherwise provided in the articles or bylaws, a corporation shall have a president, a secretary, a treasurer, and such other officers as are appointed by the board.

(b) The bylaws or the board shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

(c) The same individual may simultaneously hold more than one office in a corporation.

Source: Laws 1996, LB 681, § 90.

21-1991 Duties and authority of officers.

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties and authority prescribed in a resolution of the board or by direction of an officer authorized by the board to prescribe the duties and authority of other officers.

Source: Laws 1996, LB 681, § 91.

21-1992 Standards of conduct for officers.

(a) An officer with discretionary authority shall discharge his or her duties under that authority:

(1) In good faith;

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) In a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any.

(b) In discharging his or her duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One or more officers or employees of the corporation who the officer reasonably believes to be reliable and competent in the matters presented;

(2) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or

(3) In the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and who the officer believes to be reliable and competent in the matters presented.

(c) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this section unwarranted.

(d) An officer is not liable to the corporation, any member, or other person for any action taken or not taken as an officer, if the officer acted in compliance with this section.

Source: Laws 1996, LB 681, § 92.

21-1993 Resignation and removal of officers.

(a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is effective unless the notice specifies a future effective date. If a resignation is made effective at a future date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

(b) A board may remove any officer at any time with or without cause.

Source: Laws 1996, LB 681, § 93.

21-1994 Contract rights of officers.

(a) The appointment of an officer does not itself create contract rights.

(b) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

Source: Laws 1996, LB 681, § 94.

21-1995 Officers' authority to execute documents.

Any contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the contract or other instrument if it is signed by any two officers in Category 1 or by one officer in Category 1 and one officer in Category 2. Category 1 and Category 2 are defined as:

Category 1 - The presiding officer of the board and the president; and

Category 2 - A vice president, the secretary, treasurer and executive director.

Source: Laws 1996, LB 681, § 95.

21-1996 Terms, defined.

For purposes of sections 21-1996 to 21-19,104:

(1) Corporation includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction;

(2) Director means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is

considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. Director includes, unless the context requires otherwise, the estate or personal representative of a director;

(3) Expenses include counsel fees;

(4) Liability means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses actually incurred with respect to a proceeding;

(5) Official capacity means: (i) When used with respect to a director, the office of director in a corporation; and (ii) when used with respect to an individual other than a director, as contemplated in section 21-19,102, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. Official capacity does not include service for any other foreign or domestic business or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise;

(6) Party includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding; and

(7) Proceeding means any threatened, pending, or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative and whether formal or informal.

Source: Laws 1996, LB 681, § 96.

21-1997 Authority to indemnify.

(a) Except as provided in subsection (d) of this section a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if the individual:

(1) Conducted himself or herself in good faith; and

(2) Reasonably believed:

(i) In the case of conduct in his or her official capacity with the corporation, that his or her conduct was in its best interests; and

(ii) In all other cases, that his or her conduct was at least not opposed to its best interests; and

(3) In the case of any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the best interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subdivision (a)(2)(ii) of this section.

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(d) A corporation may not indemnify a director under this section:

(1) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(2) In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in his or her official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(e) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

Source: Laws 1996, LB 681, § 97.

21-1998 Mandatory indemnification.

Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because he or she is or was a director of the corporation against reasonable expenses actually incurred by the director in connection with the proceeding.

Source: Laws 1996, LB 681, § 98.

21-1999 Advance for expenses.

(a) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(1) The director furnishes the corporation a written affirmation of his or her good faith belief that he or she has met the standard of conduct described in section 21-1997;

(2) The director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and

(3) A determination is made that the facts then known to those making the determination would not preclude indemnification under sections 21-1996 to 21-19,104.

(b) The undertaking required by subdivision (a)(2) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in section 21-19,101.

Source: Laws 1996, LB 681, § 99.

21-19,100 Court-ordered indemnification.

Unless limited by a corporation's articles of incorporation, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the district court, after giving any notice it considers necessary, may order indemnification in the amount it considers proper if it determines:

(1) The director is entitled to mandatory indemnification under section 21-1998, in which case the district court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in subsection (a) of section 21-1997 or was adjudged liable as described in subsection (d) of section 21-1997, but if the director was adjudged so liable indemnification is limited to reasonable expenses incurred.

Source: Laws 1996, LB 681, § 100.

21-19,101 Determination and authorization of indemnification.

(a) A corporation may not indemnify a director under section 21-1997 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in section 21-1997.

(b) The determination shall be made:

(1) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(2) If a quorum cannot be obtained under subdivision (1) of this section by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate) consisting solely of two or more directors not at the time parties to the proceeding;

(3) By special legal counsel:

(i) Selected by the board of directors or its committee in the manner prescribed in subdivision (1) or (2) of this subsection; or

(ii) If a quorum of the board cannot be obtained under subdivision (1) of this subsection and a committee cannot be designated under subdivision (2) of this subsection, selected by majority vote of the full board (in which selection directors who are parties may participate); or

(4) By the members of a mutual benefit corporation, but directors who are at the time parties to the proceeding may not vote on the determination.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subdivision (b)(3) of this section to select counsel.

(d) A director of a public benefit corporation may not be indemnified until twenty days after the effective date of written notice to the Attorney General of the proposed indemnification.

Source: Laws 1996, LB 681, § 101.

21-19,102 Indemnification of officers, employees, and agents.

Unless limited by a corporation's articles of incorporation:

(1) An officer of a corporation who is not a director is entitled to mandatory indemnification under section 21-1998, and is entitled to apply for court-ordered indemnification under section 21-19,100 in each case, to the same extent as a director;

(2) The corporation may indemnify and advance expenses under sections 21-1996 to 21-19,104 to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(3) A corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

Source: Laws 1996, LB 681, § 102.

21-19,103 Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the person against the same liability under section 21-1997 or 21-1998.

Source: Laws 1996, LB 681, § 103.

21-19,104 Applicability of sections.

(a) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, bylaws, a resolution of its members or board of directors, or in a contract or otherwise, is valid only if and to the extent the provision is consistent with the provisions of sections 21-1996 to 21-19,104. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles.

(b) Sections 21-1996 to 21-19,104 do not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with appearing as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

Source: Laws 1996, LB 681, § 104.

(i) AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

21-19,105 Authority to amend.

A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles is determined as of the effective date of the amendment.

Source: Laws 1996, LB 681, § 105.

21-19,106 Amendment of articles of incorporation by directors.

(a) Unless the articles provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles without member approval:

(1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;

(4) To change the corporate name by substituting the word ''corporation,'' ''incorporated,'' ''company,'' ''limited,'' or the abbreviation ''corp.,'' ''inc.,'' ''co.,'' or ''ltd.'' for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution to the name; or

(5) To make any other change expressly permitted by the Nebraska Nonprofit Corporation Act to be made by director action.

(b) If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one or more amendments to the corporation's articles subject to any approval required pursuant to section 21-19,116. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice shall be in accordance with subsection (c) of section 21-1982. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the articles and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

Source: Laws 1996, LB 681, § 106.

21-19,107 Amendment of articles of incorporation by directors and members.

(a) Unless the Nebraska Nonprofit Corporation Act, the articles, bylaws, the members (acting pursuant to subsection (b) of this section), or the board of directors (acting pursuant to subsection (c) of this section) require a greater vote or voting by class, an amendment to a corporation's articles to be adopted must be approved:

(1) By the board if the corporation is a public benefit or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;

(2) Except as provided in subsection (a) of section 21-19,106, by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(3) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 21-19,116.

(b) The members may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(c) If the board initiates an amendment to the articles or board approval is required by subsection (a) of this section to adopt an amendment to the articles, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or any other basis.

(d) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with section 21-1955. The notice must state that the purpose, or one of the purposes,

of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

Source: Laws 1996, LB 681, § 107.

21-19,108 Class voting by members on amendments.

(a) The members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would change the rights of that class as to voting in a manner different than such amendment affects another class or members of another class.

(b) The members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would:

(1) Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than such amendment would affect another class;

(2) Change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.

(3) Increase or decrease the number of memberships authorized for that class;

(4) Increase the number of memberships authorized for another class;

(5) Effect an exchange, reclassification, or termination of the memberships of that class; or

(6) Authorize a new class of memberships.

(c) The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the articles only if a class vote is provided for in the articles or bylaws.

(d) If a class is to be divided into two or more classes as a result of an amendment to the articles of a public benefit or mutual benefit corporation, the amendment must be approved by the members of each class that would be created by the amendment.

(e) Except as provided in the articles or bylaws of a religious corporation, if a class vote is required to approve an amendment to the articles of a corporation, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(f) A class of members of a public benefit or mutual benefit corporation is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

Source: Laws 1996, LB 681, § 108.

21-19,109 Articles of amendment.

A corporation amending its articles shall deliver to the Secretary of State articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment adopted;

(3) The date of each amendment's adoption;

(4) If approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors or incorporators;

(5) If approval by members was required:

(i) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the amendment, and number of votes of each class indisputably voting on the amendment; and

(ii) Either the total number of votes cast for and against the amendment by each class entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each class and a statement that the number cast for the amendment by each class was sufficient for approval by that class; and

(6) If approval of the amendment by some person or persons other than the members, the board, or the incorporators is required pursuant to section 21-19,116, a statement that the approval was obtained.

Source: Laws 1996, LB 681, § 109.

21-19,110 Restated articles of incorporation.

(a) A corporation's board of directors may restate its articles of incorporation at any time with or without approval by members or any other person.

(b) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring approval by the members or any other person, it must be adopted as provided in section 21-19,107.

(c) If the restatement includes an amendment requiring approval by members, the board must submit the restatement to the members for their approval.

(d) If the board seeks to have the restatement approved by the members at a membership meeting, the corporation shall notify each of its members of the proposed membership meeting in writing in accordance with section 21-1955. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change it would make in the articles.

(e) If the board seeks to have the restatement approved by the members by written ballot or written consent, the material soliciting the approval shall contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change it would make in the articles.

(f) A restatement requiring approval by the members must be approved by the same vote as an amendment to articles under section 21-19,107.

(g) If the restatement includes an amendment requiring approval pursuant to section 21-19,116, the board must submit the restatement for such approval.

(h) A corporation restating its articles shall deliver to the Secretary of State articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(1) Whether the restatement contains an amendment to the articles requiring approval by the members or any other person other than the board of directors and, if it does not, that the board of directors adopted the restatement; or

(2) If the restatement contains an amendment to the articles requiring approval by the members, the information required by section 21-19,109; and

(3) If the restatement contains an amendment to the articles requiring approval by a person whose approval is required pursuant to section 21-19,116, a statement that such approval was obtained.

(i) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(j) The Secretary of State may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection (h) of this section.

Source: Laws 1996, LB 681, § 110.

21-19,111 Amendment pursuant to judicial reorganization.

(a) A corporation's articles may be amended without board approval or approval by the members or approval required pursuant to section 21-19,116 to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles after amendment contain only provisions required or permitted by section 21-1921.

(b) The individual or individuals designated by the court shall deliver to the Secretary of State articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment approved by the court;

(3) The date of the court's order or decree approving the articles of amendment;

(4) The title of the reorganization proceeding in which the order or decree was entered; and

(5) A statement that the court had jurisdiction of the proceeding under federal statute.

(c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Source: Laws 1996, LB 681, § 111.

21-19,112 Effect of amendment and restatement.

An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, any requirement or limitation imposed upon the corporation, or any property held by it by virtue of any trust upon which such property is held by the corporation, or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name

does not abate a proceeding brought by or against the corporation in its former name.

Source: Laws 1996, LB 681, § 112.

21-19,113 Amendment to bylaws by directors.

If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one or more amendments to the corporation's bylaws subject to any approval required pursuant to section 21-19,116. The corporation shall provide notice of any meeting of directors at which an amendment is to be approved. The notice shall be in accordance with subsection (c) of section 21-1982. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

Source: Laws 1996, LB 681, § 113.

21-19,114 Amendment to bylaws by directors and members.

(a) Unless the Nebraska Nonprofit Corporation Act, the articles, bylaws, the members (acting pursuant to subsection (b) of this section), or the board of directors (acting pursuant to subsection (c) of this section) require a greater vote or voting class, an amendment to a corporation's bylaws to be adopted must be approved:

(1)(i) By the board if the corporation is a public benefit or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of the directors, or the method or way in which directors are elected or selected;

(ii) By the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(iii) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 21-19,116; or

(2) If the articles authorize:

(i)(A) By the board if the amendment does not relate to the number of directors, the composition of the board, the term of office of the directors, or the method or way in which directors are elected or selected; or

(B) By the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(ii) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 21-19,116.

(b) The members may condition the amendment's adoption on its receipt of a higher percentage of affirmative votes or on any other basis.

(c) If the board initiates an amendment to the bylaws or board approval is required or authorized by subsection (a) of this section to adopt an amendment to the bylaws, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its

members of the proposed membership meeting in writing in accordance with section 21-1955. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

Source: Laws 1996, LB 681, § 114; Laws 1999, LB 422, § 1.

21-19,115 Class voting by members on amendments.

(a) The members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would change the rights of that class as to voting in a manner different than such amendment affects another class or members of another class.

(b) The members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would:

(1) Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than such amendment would affect another class;

(2) Change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class;

(3) Increase or decrease the number of memberships authorized for that class;

(4) Increase the number of memberships authorized for another class;

(5) Effect an exchange, reclassification, or termination of all or part of the memberships of that class; or

(6) Authorize a new class of memberships.

(c) The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the bylaws only if a class vote is provided for in the articles or bylaws.

(d) If a class is to be divided into two or more classes as a result of an amendment to the bylaws, the amendment must be approved by the members of each class that would be created by the amendment; and

(e) If a class vote is required to approve an amendment to the bylaws, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(f) A class of members is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

Source: Laws 1996, LB 681, § 115.

21-19,116 Approval by third persons.

The articles may require an amendment to the articles or bylaws to be approved in writing by a specified person or persons other than the board. Such an article provision may only be amended with the approval in writing of such person or persons.

Source: Laws 1996, LB 681, § 116.

21-19,117 Amendment terminating members or redeeming or canceling memberships.

(a) Any amendment to the articles or bylaws of a public benefit or mutual benefit corporation that would terminate all members or any class of members or redeem or cancel all memberships or any class of memberships must meet the requirements of the Nebraska Nonprofit Corporation Act and this section.

(b) Before adopting a resolution proposing such an amendment, the board of a mutual benefit corporation shall give notice of the general nature of the amendment to the members.

(c) After adopting a resolution proposing such an amendment, the notice to members proposing such amendment shall include one statement of up to five hundred words opposing the proposed amendment if such statement is submitted by any five members or members having three percent or more of the voting power, whichever is less, not later than twenty days after the board has voted to submit such amendment to the members for their approval. In public benefit corporations the production and mailing costs shall be paid by the requesting members. In mutual benefit corporations the production and mailing costs shall be paid by the corporation.

(d) Any such amendment shall be approved by the members by two-thirds of the votes cast by each class.

(e) The provisions of section 21-1947 shall not apply to any amendment meeting the requirements of the act and this section.

Source: Laws 1996, LB 681, § 117.

(j) MERGER

21-19,118 Approval of plan of merger.

(a) Subject to the limitations set forth in section 21-19,119, one or more nonprofit corporations may merge into a business or nonprofit corporation, if the plan of merger is approved as provided in section 21-19,120.

(b) The plan of merger must set forth:

(1) The name of each corporation planning to merge and the name of the surviving corporation into which each plans to merge;

(2) The terms and conditions of the planned merger;

(3) The manner and basis, if any, of converting the memberships of each public benefit or religious corporation into memberships of the surviving corporation; and

(4) If the merger involves a mutual benefit corporation, the manner and basis, if any, of converting memberships of each merging corporation into memberships, obligations, or securities of the surviving or any other corporation or into cash or other property in whole or in part.

(c) The plan of merger may set forth:

(1) Any amendments to the articles of incorporation or bylaws of the surviving corporation to be effected by the planned merger; and

(2) Other provisions relating to the planned merger.

Source: Laws 1996, LB 681, § 118.

21-19,119 Mergers by public benefit or religious corporations; procedure.

(a)(1) Without the prior approval of the district court in a proceeding in which the Attorney General has been given written notice, a public benefit or religious corporation may merge only with:

(i) A public benefit or religious corporation;

(ii) A foreign corporation that would qualify under the Nebraska Nonprofit Corporation Act as a public benefit or religious corporation;

(iii) A wholly-owned foreign or domestic business or mutual benefit corporation, provided the public benefit or religious corporation is the surviving corporation and continues to be a public benefit or religious corporation after the merger; or

(iv) A business or mutual benefit corporation, if: (A) On or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets (including goodwill) of the public benefit corporation or the fair market value of the public benefit corporation if it were to be operated as a business concern, are transferred or conveyed to one or more persons who would have received its assets under subdivisions (a)(5) and (6) of section 21-19,134 had it dissolved; (B) it shall return, transfer, or convey any assets held by it upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and (C) the merger is approved by a majority of directors of the public benefit or religious corporation who are not and will not become members or shareholders in or officers, employees, agents, or consultants of the surviving corporation.

(2) An application for prior approval of a merger for which prior approval is required by this subsection shall be made jointly by all corporations planning to merge and shall set forth by affidavit;

(i) The plan of merger;

(ii) If approval by the members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;

(iii) If approval by members was required;

(A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and the number of votes of each class indisputably voting on the plan; and

(B) Either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class; and

(iv) If approval of the plan by some person or persons other than the members or the board is required pursuant to subdivision (a)(3) of section 21-19,120, a statement that the approval was obtained.

(3) Upon the filing of the application, the district court shall fix a time for hearing thereon and shall direct that written notice thereof be given to the Attorney General. If it shall appear to the satisfaction of the district court that the provisions of this subsection have been complied with and the interests of the corporations planning to merge and the public interest will not be adversely affected by the merger, the district court shall issue an order approving the merger upon such terms and conditions as it may prescribe.

(b) At least twenty days before consummation of any merger of a public benefit corporation or a religious corporation pursuant to subdivision (a)(1)(iv) of this section, notice, including a copy of the proposed plan of merger, must be delivered to the Attorney General.

(c) Without the prior written consent of the Attorney General or of the district court in a proceeding in which the Attorney General has been given notice, no member of a public benefit or religious corporation may receive or keep anything as a result of a merger other than a membership or membership in the surviving public benefit or religious corporation. If it shall appear to the satisfaction of the district court that the interests of the corporations planning to merge and the public interest will not be adversely affected by the transaction, the district court shall issue an order approving the transaction upon such terms and conditions as it may prescribe.

(d) Venue for a proceeding to obtain prior approval of a merger for which prior approval is required by subsection (a) of this section and for a proceeding to obtain prior written consent of a transaction for which prior written consent is required by subsection (c) of this section lies in the district court in the county where the surviving corporation's principal office, or, if none in this state, its registered office, is located or where one of the corporations planning to merge is located.

Source: Laws 1996, LB 681, § 119; Laws 1997, LB 121, § 1.

21-19,120 Action on plan by board, members, and third persons.

(a) Unless the Nebraska Nonprofit Corporation Act, the articles, the bylaws, or the board of directors or members (acting pursuant to subsection (c) of this section) require a greater vote or voting by class, a plan of merger to be adopted must be approved:

(1) By the board;

(2) By the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(3) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 21-19,116 for an amendment to the articles or bylaws.

(b) If the corporation does not have members, the merger must be approved by a majority of the directors in office at the time the merger is approved. In addition the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with subsection (c) of section 21-1982. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.

(c) The board may condition its submission of the proposed merger, and the members may condition their approval of the merger, on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 21-1955. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the merging corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(e) If the board seeks to have the plan approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provisions that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(f) Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under section 21-19,108 or 21-19,115. The plan is approved by a class of members by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(g) After a merger is adopted, and at any time before articles of merger are filed, the planned merger may be abandoned (subject to any contractual rights) without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors.

Source: Laws 1996, LB 681, § 120.

21-19,121 Articles of merger.

After a plan of merger is approved by the board of directors, and if required by section 21-19,119 or 21-19,120, by the district court or the members and any other persons, the surviving corporation shall deliver to the Secretary of State articles of merger setting forth:

(1) The plan of merger;

(2) If approval by the members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;

(3) If approval by members was required:

(i) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and

(ii) Either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed

votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class;

(4) If approval of the plan by some person or persons other than the members or the board is required pursuant to subdivision (a)(3) of section 21-19,120, a statement that the approval was obtained; and

(5) If prior approval of the district court is required pursuant to section 21-19,119, a certified copy of the order of the district court.

Source: Laws 1996, LB 681, § 121; Laws 1997, LB 121, § 2.

21-19,122 Effect of merger.

When a merger takes effect:

(1) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(2) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment subject to any and all conditions to which the property was subject prior to the merger;

(3) The surviving corporation has all liabilities and obligations of each corporation party to the merger;

(4) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased; and

(5) The articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan of merger.

Source: Laws 1996, LB 681, § 122.

21-19,123 Merger with foreign corporation.

(a) Except as provided in section 21-19,119, one or more foreign business or nonprofit corporations may merge with one or more domestic nonprofit corporations if:

(1) The merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(2) The foreign corporation complies with section 21-19,121 if it is the surviving corporation of the merger; and

(3) Each domestic nonprofit corporation complies with the provisions of sections 21-19,118 to 21-19,120 and, if it is the surviving corporation of the merger, with section 21-19,121.

(b) Upon the merger taking effect, the surviving foreign business or nonprofit corporation is deemed to agree that it may be served with process within or without this state in any proceeding in the courts of this state brought against it.

Source: Laws 1996, LB 681, § 123.

21-19,124 Bequests, devises, and gifts.

Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a constituent corporation and that takes effect or remains payable after the merger, inures to the surviving corporation unless the will or other instrument otherwise specifically provides.

Source: Laws 1996, LB 681, § 124.

(k) SALE OF ASSETS

21-19,125 Sale of assets in regular course of activities and mortgage of assets.

(a) A corporation may on the terms and conditions and for the consideration determined by the board of directors:

(1) Sell, lease, exchange, or otherwise dispose of all or substantially all of its property in the usual and regular course of its activities; or

(2) Mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of its property whether or not in the usual and regular course of its activities.

(b) Unless the articles require it, approval of the members or any other person of a transaction described in subsection (a) of this section is not required.

Source: Laws 1996, LB 681, § 125.

21-19,126 Sale of assets other than in regular course of activities.

(a) A corporation may sell, lease, exchange, or otherwise dispose of all or substantially all of its property (with or without the goodwill) other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the corporation's board if the proposed transaction is authorized by subsection (b) of this section.

(b) Unless the Nebraska Nonprofit Corporation Act, the articles, or bylaws or the board of directors or members (acting pursuant to subsection (d) of this section) require a greater vote or voting by class, the proposed transaction to be authorized must be approved:

(1) By the board;

(2) By the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(3) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 21-19,116 for an amendment to the articles or bylaws.

(c) If the corporation does not have members the transaction must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with subsection (c) of section 21-1982. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(d) The board may condition its submission of the proposed transaction and the members may condition their approval of the transaction on receipt of a higher percentage of affirmative votes or on any other basis.

(e) If the corporation seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 21-1955. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(f) If the board needs to have the transaction approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of a description of the transaction.

(g) A public benefit or religious corporation must give written notice to the Attorney General twenty days before it sells, leases, exchanges, or otherwise disposes of all or substantially all of its property if the transaction is not in the usual and regular course of its activities unless the Attorney General has given the corporation a written waiver of this subsection.

(h) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights) without further action by the members or any other person who approved the transaction in accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors.

Source: Laws 1996, LB 681, § 126.

(l) DISTRIBUTIONS

21-19,127 Prohibited distributions.

Except as authorized by section 21-19,128, a corporation shall not make any distributions.

Source: Laws 1996, LB 681, § 127.

21-19,128 Authorized distributions.

(a) A mutual benefit corporation may purchase its memberships if after the purchase is completed:

(1) The corporation would be able to pay its debts as they become due in the usual course of its activities; and

(2) The corporation's total assets would at least equal the sum of its total liabilities.

(b) Corporations may make distributions upon dissolution in conformity with sections 21-19,129 to 21-19,145.

Source: Laws 1996, LB 681, § 128.

(m) DISSOLUTION

21-19,129 Dissolution by incorporators or directors; notice of dissolution; plan.

(a) A majority of the incorporators or directors of a corporation that has no members may, subject to any approval required by the articles or bylaws, dissolve the corporation by delivering to the Secretary of State articles of dissolution.

(b) The corporation shall give notice of any meeting at which dissolution will be approved. The notice shall be in accordance with subsection (c) of section 21-1982. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation.

(c) The incorporators or directors in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

Source: Laws 1996, LB 681, § 129.

21-19,130 Dissolution by directors, members, and third persons; plan.

(a) Unless the Nebraska Nonprofit Corporation Act, the articles, or bylaws or the board of directors or members (acting pursuant to subsection (c) of this section) require a greater vote or voting by class, dissolution is authorized if it is approved:

(1) By the board;

(2) By the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(3) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 21-19,116 for an amendment to the articles or bylaws.

(b) If the corporation does not have members, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with subsection (c) of section 21-1982. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(c) The board may condition its submission of the proposed dissolution, and the members may condition their approval of the dissolution, on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 21-1955. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(e) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.

(f) The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

Source: Laws 1996, LB 681, § 130.

21-19,131 Notice to the Attorney General.

(a) A public benefit or religious corporation shall give the Attorney General written notice that it intends to dissolve at or before the time it delivers articles of dissolution to the Secretary of State. The notice shall include a copy or summary of the plan of dissolution.

(b) No assets shall be transferred or conveyed by a public benefit or religious corporation as part of the dissolution process until twenty days after it has given the written notice required by subsection (a) of this section to the Attorney General or until the Attorney General has consented in writing to the dissolution or indicated in writing that he or she will take no action with respect to the transfer or conveyance, whichever is earlier.

(c) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the Attorney General a list showing those (other than creditors) to whom the assets were transferred or conveyed. The list shall indicate the addresses of each person (other than creditors) who received assets and indicate what assets each received.

Source: Laws 1996, LB 681, § 131.

21-19,132 Articles of dissolution.

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State articles of dissolution setting forth:

(1) The name of the corporation;

(2) The date dissolution was authorized;

(3) A statement that dissolution was approved by a sufficient vote of the board;

(4) If approval of members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators;

(5) If approval by members was required:

(i) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on dissolution, and number of votes of each class indisputably voting on dissolution; and

(ii) Either the total number of votes cast for and against dissolution by each class entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution by each class and a statement that the number cast for dissolution by each class was sufficient for approval by that class;

(6) If approval of dissolution by some person or persons other than the members, the board, or the incorporators is required pursuant to subdivision (a)(3) of section 21-19,130, a statement that the approval was obtained; and

(7) If the corporation is a public benefit or religious corporation, that the notice to the Attorney General required by subsection (a) of section 21-19,131 has been given.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

Source: Laws 1996, LB 681, § 132.

21-19,133 Revocation of dissolution.

(a) A corporation may revoke its dissolution within one hundred twenty days after its effective date.

(b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members or any other person.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Secretary of State for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(1) The name of the corporation;

(2) The effective date of the dissolution that was revoked;

(3) The date that the revocation of dissolution was authorized;

(4) If the corporation's board of directors (or incorporators) revoked the dissolution, a statement to that effect;

(5) If the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(6) If member or third person action was required to revoke the dissolution, the information required by subdivisions (a)(5) and (6) of section 21-19,132.

(d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its activities as if dissolution had never occurred.

Source: Laws 1996, LB 681, § 133.

21-19,134 Effect of dissolution.

(a) A dissolved corporation continues its corporate existence but may not carry on any activities except those appropriate to wind up and liquidate its affairs, including:

(1) Preserving and protecting its assets and minimizing its liabilities;

(2) Discharging or making provision for discharging its liabilities and obligations;

(3) Disposing of its properties that will not be distributed in kind;

(4) Returning, transferring, or conveying assets held by the corporation upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition;

(5) Transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;

(6) If the corporation is a public benefit or religious corporation and no provision has been made in its articles or bylaws for the distribution of assets on dissolution, transferring, subject to any contractual or legal requirement, its assets: (i) To one or more persons described in section 501(c)(3) of the Internal Revenue Code engaged in activities substantially similar to those of the dissolved corporation; or (ii) if the dissolved corporation is not described in

section 501(c)(3) of the Internal Revenue Code, to one or more public benefit or religious corporations;

(7) If the corporation is a mutual benefit corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it has no members, to those persons to whom the corporation holds itself out as benefiting or serving; and

(8) Doing every other act necessary to wind up and liquidate its assets and affairs.

(b) Dissolution of a corporation does not:

(1) Transfer title of the corporation's property;

(2) Subject its directors or officers to standards of conduct different from those prescribed in sections 21-1968 to 21-19,104;

(3) Change quorum or voting requirements for its board or members, change provisions for selection, resignation, or removal of its directors or officers or both, or change provisions for amending its bylaws;

(4) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(5) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(6) Terminate the authority of the registered agent.

Source: Laws 1996, LB 681, § 134.

21-19,135 Known claims against dissolved corporations; notice.

(a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

(1) Describe information that must be included in a claim;

(2) Provide a mailing address where a claim may be sent;

(3) State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(4) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(1) If a claimant who was given written notice under subsection (b) of this section does not deliver the claim to the dissolved corporation by the deadline;

(2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

(d) For purposes of this section, claim does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Source: Laws 1996, LB 681, § 135.

21-19,136 Unknown claims against dissolved corporation; notice.

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

(1) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if none in this state, its registered office) is or was last located;

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:

(1) A claimant who did not receive written notice under section 21-19,135;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on; and

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

(1) Against the dissolved corporation, to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

Source: Laws 1996, LB 681, § 136.

21-19,137 Grounds for administrative dissolution.

The Secretary of State may commence a proceeding under section 21-19,138 to administratively dissolve a corporation if:

(1) The corporation does not pay any fees, taxes, or penalties imposed by the Nebraska Nonprofit Corporation Act or other law when they are due;

(2) The corporation does not deliver its biennial report to the Secretary of State when it is due;

(3) The corporation is without a registered agent or registered office in this state for sixty days or more;

(4) The corporation does not notify the Secretary of State that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued within one hundred twenty days; or

(5) The corporation's period of duration, if any, stated in its articles of incorporation expires.

Source: Laws 1996, LB 681, § 137.

21-19,138 Procedure for and effect of administrative dissolution.

(a) Upon determining that one or more grounds exist under section 21-19,137 for dissolving a corporation, the Secretary of State shall serve the corporation with written notice of that determination under section 21-1937, and in the case of a public benefit corporation shall notify the Attorney General in writing.

(b) If the corporation does not, within sixty days after service of the notice is perfected under section 21-1937, correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist, the Secretary of State may administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under section 21-1937 and in the case of a public benefit corporation shall notify the Attorney General in writing.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its affairs under section 21-19,134 and notify its claimants under sections 21-19,135 and 21-19,136.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

Source: Laws 1996, LB 681, § 138.

21-19,139 Reinstatement following administrative dissolution.

(a) A corporation administratively dissolved under section 21-19,138 may apply to the Secretary of State for reinstatement. The application must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(3) State that the corporation's name satisfies the requirements of section 21-1931.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-1937.

(c) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.

Source: Laws 1996, LB 681, § 139.

21-19,140 Appeal from denial of reinstatement.

(a) The Secretary of State, upon denying a corporation's application for reinstatement following administrative dissolution, shall serve the corporation under section 21-1937 with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the district court of Lancaster County within ninety days after service of the notice of denial is perfected. The corporation appeals by petitioning the district court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.

(c) The district court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The district court's final decision may be appealed as in other civil proceedings.

Source: Laws 1996, LB 681, § 140.

21-19,141 Grounds for judicial dissolution.

(a) The district court may dissolve a corporation:

(1) In a proceeding by the Attorney General if it is established that:

(i) The corporation obtained its articles of incorporation through fraud;

(ii) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(iii) The corporation is a public benefit corporation and the corporate assets are being misapplied or wasted; or

(iv) The corporation is a public benefit corporation and is no longer able to carry out its purposes;

(2) Except as provided in the articles or bylaws of a religious corporation, in a proceeding by fifty members or members holding five percent of the voting power, whichever is less, or by a director or any person specified in the articles, if it is established that:

(i) The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to breach the deadlock;

(ii) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have, or would otherwise have, expired;

(iv) The corporate assets are being misapplied or wasted; or

(v) The corporation is a public benefit or religious corporation and is no longer able to carry out its purposes;

(3) In a proceeding by a creditor if it is established that:

(i) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(b) Prior to dissolving a corporation, the district court shall consider whether:

(1) There are reasonable alternatives to dissolution;

(2) Dissolution is in the public interest, if the corporation is a public benefit corporation; and

(3) Dissolution is the best way of protecting the interests of members if the corporation is a mutual benefit corporation.

Source: Laws 1996, LB 681, § 141.

21-19,142 Procedure for judicial dissolution.

(a) Venue for a proceeding by the Attorney General to dissolve a corporation lies in the district court in the county where a corporation's principal office (or, if none in this state, its registered office) is or was last located or the district court of Lancaster County. Venue for a proceeding brought by any other party named in section 21-19,141 lies in the county where a corporation's principal office (or, if none in this state, its registered office) is or was last located.

(b) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) The district court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.

(d) A person other than the Attorney General who brings an involuntary dissolution proceeding for a public benefit or religious corporation shall forthwith give written notice of the proceeding to the Attorney General who may intervene.

Source: Laws 1996, LB 681, § 142.

21-19,143 Receivership or custodianship.

(a) The district court in a proceeding brought to dissolve a public benefit or mutual benefit corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The district court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The district court may appoint an individual or a domestic or foreign business or nonprofit corporation (authorized to transact business in this state) as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The district court shall describe the powers and duties of the receiver or custodian in its appointing order, which order may be amended from time to time. Among other powers:

(1) The receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the district court. The receiver's power to dispose of the assets of the corporation is

subject to any trust and any other restrictions that would be applicable to the corporation; and (ii) may sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation in all courts of this state;

(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

(d) The district court during a receivership may redesignate the receiver as a custodian, and during a custodianship may redesignate the custodian as a receiver, if doing so is in the best interests of the corporation, its members, and creditors.

(e) The district court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

Source: Laws 1996, LB 681, § 143.

21-19,144 Decree of dissolution.

(a) If after a hearing the district court determines that one or more grounds for judicial dissolution described in section 21-19,141 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the district court shall deliver a certified copy of the decree to the Secretary of State, who shall file it.

(b) After entering the decree of dissolution, the district court shall direct the winding up and liquidation of the corporation's affairs in accordance with section 21-19,134 and the notification of its claimants in accordance with sections 21-19,135 and 21-19,136.

Source: Laws 1996, LB 681, § 144.

21-19,145 Assets; deposit with State Treasurer; when.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them, shall be reduced to cash, subject to known trust restrictions, and deposited with the State Treasurer for safekeeping in accordance with the Uniform Disposition of Unclaimed Property Act. In the State Treasurer's discretion the property may be received and held in kind. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited or property held in kind, the State Treasurer shall deliver to the creditor, claimant, or member, or his or her representative, that amount or property in accordance with the act.

Source: Laws 1996, LB 681, § 145.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

(n) FOREIGN CORPORATIONS

21-19,146 Foreign corporation; authority to transact business required.

(a) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a) of this section:

(1) Maintaining, defending, or settling any proceeding;

(2) Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;

(3) Maintaining bank accounts;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities or maintaining trustees or depositaries with respect to those securities;

(5) Selling through independent contractors;

(6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(7) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(9) Owning, without more, real or personal property;

(10) Conducting an isolated transaction which is completed within thirty days and which is not one in the course of repeated transactions of a like nature; or

(11) Transacting business in interstate commerce.

(c) The list of activities in subsection (b) of this section is not exhaustive.

Source: Laws 1996, LB 681, § 146.

21-19,147 Foreign corporation; transacting business without authority; consequences; civil penalty.

(a) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation is liable for a civil penalty of five hundred dollars for each day, but not to exceed a total of ten thousand dollars for each year, it transacts business in this state without a certificate of authority. The Attorney General may collect all penalties due under this subsection. All civil penalties collected under this subsection shall be remitted by the Attorney General for credit to the permanent school fund.

(e) Notwithstanding subsections (a) and (b) of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the

validity of its corporate acts or prevent it from defending any proceeding in this state.

Source: Laws 1996, LB 681, § 147.

21-19,148 Foreign corporation; application for certificate of authority.

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State. The application must set forth:

(1) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 21-19,151;

(2) The name of the state or country under whose law it is incorporated;

(3) The date of incorporation and period of duration;

(4) The street address of its principal office;

(5) The street address of its registered office in this state and the name of its registered agent at that office;

(6) The names and street addresses of its current directors and officers;

(7) Whether the foreign corporation has members; and

(8) Whether the corporation, if it had been incorporated in this state, would be a public benefit, mutual benefit, or religious corporation.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is filed in this state.

Source: Laws 1996, LB 681, § 148.

21-19,149 Foreign corporation; amended certificate of authority.

(a) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the Secretary of State if it changes:

(1) Its corporate name;

(2) The period of its duration; or

(3) The state or country of its incorporation.

(b) The requirements of section 21-19,148 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

Source: Laws 1996, LB 681, § 149.

21-19,150 Foreign corporation; effect of certificate of authority.

(a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in the Nebraska Nonprofit Corporation Act.

(b) A foreign corporation with a valid certificate of authority has the same rights and enjoys the same privileges as a domestic corporation of like charac-

ter. A foreign corporation is also, except as otherwise provided by the act, subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of like character.

(c) The act does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

Source: Laws 1996, LB 681, § 150.

21-19,151 Foreign corporation; corporate name.

(a) If the corporate name of a foreign corporation does not satisfy the requirements of section 21-1931, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d) of this section, the corporate name (including a fictitious name) of a foreign corporation shall not be the same as or deceptively similar to, upon the records of the Secretary of State, any of the names referenced in subdivisions (b)(1) through (5) of this section:

(1) The corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state;

(2) A corporate name reserved or registered under section 21-1932, 21-1933, 21-2029, or 21-2030;

(3) The fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state;

(4) A trade name registered in this state pursuant to sections 87-208 to 87-220; and

(5) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(c) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation or business entity (incorporated or authorized to transact business in this state) that is deceptively similar to, upon the records of the Secretary of State, the name applied for. The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation or business entity consents in writing to the use; or

(2) The applying corporation delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing its right to use the name applied for in this state.

(d) A foreign corporation may use in this state the name (including the fictitious name) of another domestic or foreign business or nonprofit corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to transact business in this state and the foreign corporation:

(1) Has merged with the other corporation or business entity;

(2) Has been formed by a reorganization of the other corporation or business entity; or

(3) Has acquired all or substantially all of the assets, including the name, of the other corporation or business entity.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 21-1931, it shall not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 21-1931 and obtains an amended certificate of authority under section 21-19,149.

Source: Laws 1996, LB 681, § 151; Laws 1997, LB 44, § 4; Laws 1997, LB 453, § 2; Laws 2003, LB 464, § 3.

21-19,152 Foreign corporation; registered office; registered agent.

Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

(1) A registered office with the same address as that of its registered agent; and

(2) A registered agent, who may be:

(i) An individual who resides in this state and whose office is identical with the registered office;

(ii) A domestic business or nonprofit corporation whose office is identical with the registered office; or

(iii) A foreign business or nonprofit corporation authorized to transact business in this state whose office is identical with the registered office.

Source: Laws 1996, LB 681, § 152.

21-19,153 Foreign corporation; change of registered office or registered agent.

(a) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) Its name;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of its new registered office;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and

(6) That after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(b) If a registered agent changes the street address of its business office, the agent may change the address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

Source: Laws 1996, LB 681, § 153.

21-19,154 Foreign corporation; resignation of registered agent.

(a) The registered agent of a foreign corporation may resign as agent by signing and delivering to the Secretary of State for filing the original and two exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the Secretary of State shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if not discontinued. The Secretary of State shall mail the other copy to the foreign corporation at its principal office address shown in its most recent biennial report.

(c) The agency is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

Source: Laws 1996, LB 681, § 154.

21-19,155 Foreign corporation; service.

(a) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent biennial report filed under section 21-19,172 if the foreign corporation:

(1) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(2) Has withdrawn from transacting business in this state under section 21-19,156; or

(3) Has had its certificate of authority revoked under section 21-19,158.

(c) Service is perfected under subsection (b) of this section at the earliest of:

(1) The date the foreign corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the foreign corporation; or

(3) Five days after its deposit in the United States mail, as evidenced by the postmark if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

Source: Laws 1996, LB 681, § 155.

21-19,156 Foreign corporation; withdrawal.

(a) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) That it revokes the authority of its registered agent to accept service on its behalf and consents that service of process in any proceeding based on a cause of action arising during the time it was authorized to do business in this state may thereafter be made on such corporation outside this state; and

(4) A mailing address at which process against the corporation may be served.

Source: Laws 1996, LB 681, § 156.

21-19,157 Foreign corporation; grounds for revocation of certificate of authority.

(a) The Secretary of State may commence a proceeding under section 21-19,158 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation does not deliver the biennial report to the Secretary of State when it is due;

(2) The foreign corporation does not pay any fees, taxes, or penalties imposed by the Nebraska Nonprofit Corporation Act or other law when they are due;

(3) The foreign corporation is without a registered agent or registered office in this state for sixty days or more;

(4) The foreign corporation does not inform the Secretary of State under section 21-19,153 or 21-19,154 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within ninety days after the change, resignation, or discontinuance;

(5) An incorporator, director, officer, or agent of the foreign corporation signed a document such person knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing; or

(6) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or has disappeared as the result of a merger.

(b) The Attorney General may commence a proceeding under section 21-19,158 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) The corporation would have been a public benefit corporation had it been incorporated in this state and that its corporate assets in this state are being misapplied or wasted; or

(3) The corporation would have been a public benefit corporation had it been incorporated in this state and it is no longer able to carry out its purposes.

Source: Laws 1996, LB 681, § 157.

21-19,158 Foreign corporation; procedure and effect of revocation.

(a) The Secretary of State upon determining that one or more grounds exist under section 21-19,157 for revocation of a certificate of authority shall serve the foreign corporation with written notice of that determination under section 21-19,155.

(b) The Attorney General, upon determining that one or more grounds exist under subsection (b) of section 21-19,157 for revocation of a certificate of authority, shall request the Secretary of State to serve, and the Secretary of State shall serve the foreign corporation with written notice of that determination under section 21-19,155.

(c) If the foreign corporation does not, within sixty days after service of the notice is perfected under section 21-19,155, correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State or Attorney General that each ground for revocation determined by the Secretary of State or Attorney General does not exist, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate of revocation and serve a copy on the foreign corporation under section 21-19,155.

(d) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate of revocation revoking its certificate of authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

Source: Laws 1996, LB 681, § 158.

21-19,159 Foreign corporation; revoked certificate; application for reinstatement.

(a) A foreign corporation the certificate of authority of which has been revoked under section 21-19,158 may apply to the Secretary of State for reinstatement. The application must:

(1) Recite the name of the foreign corporation and the effective date of the revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) State that the foreign corporation's name satisfies the requirements of section 21-19,151.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of revocation and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-19,155.

(c) When reinstatement is effective, it relates back to and takes effect as of the effective date of the revocation and the foreign corporation shall resume carrying on its activities as if the revocation had never occurred.

Source: Laws 1996, LB 681, § 159.

21-19,160 Foreign corporation; denial of reinstatement; appeal.

(a) The Secretary of State, upon denying a foreign corporation's application for reinstatement following revocation of its certificate of authority, shall serve the foreign corporation under section 21-19,155 with a written notice that explains the reason or reasons for denial.

(b) The foreign corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after the service of the notice of denial is perfected under section 21-19,155. The foreign corporation appeals by petitioning the district court to set aside the revocation and attaching to the petition copies of the Secretary of State's certificate of revocation, the foreign corporation's application for reinstatement, and the Secretary of State's notice of denial.

(c) The district court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action it considers appropriate.

(d) The district court's final decision may be appealed as in other civil proceedings.

Source: Laws 1996, LB 681, § 160.

21-19,161 Foreign corporation; domestication procedure.

In lieu of compliance with section 21-19,146, relating to the authorization of foreign corporations to transact business in this state, any corporation organized under the laws of any other state or states, which has heretofore filed, or which may hereafter file, with the Secretary of State of this state, a copy certified by the Secretary of State or other proper officer of the state or country under the laws of which such foreign corporation is formed, of its charter or articles of association or incorporation, together with all amendments to such date and the street address of its registered office in this state and the name of its registered agent at that office, on filing with the Secretary of State a certified copy of a resolution adopted by its board of directors, including the date the resolution was adopted, accepting and agreeing to be bound by the provisions of the Nebraska Nonprofit Corporation Act, with respect to its property and business operations within this state, shall become and be a body corporate of this state.

Source: Laws 1996, LB 681, § 161.

21-19,162 Foreign corporation; renouncing domestication.

Any foreign corporation, which has domesticated pursuant to section 21-19,161, may cease to be a domesticated corporation by filing with the Secretary of State a certified copy of a resolution adopted by its board of directors, renouncing its domestication and withdrawing its acceptance and agreement provided for in section 21-19,161.

Source: Laws 1996, LB 681, § 162.

21-19,163 Foreign corporation; domestication; procedure.

If a foreign corporation, which has domesticated pursuant to section 21-19,161, surrenders its foreign corporate charter and files, records, and publishes notice of amended articles of incorporation in the manner, time, and places required by sections 21-1920, 21-1921, and 21-19,173, such foreign

corporation shall thereupon become and be a domestic corporation organized under the Nebraska Nonprofit Corporation Act.

Source: Laws 1996, LB 681, § 163.

21-19,164 Foreign corporation organized prior to January 1, 1997; status.

Any corporation organized under the laws of any other state or territory which had become, in accordance with section 21-1966.01, as such section existed prior to January 1, 1997, a body corporate of this state, shall retain such status for all purposes notwithstanding the repeal of such section.

Source: Laws 1996, LB 681, § 164.

(o) RECORDS AND REPORTS

21-19,165 Corporate records.

(a) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by subsection (d) of section 21-1985.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(4) The minutes of all meetings of members and records of all actions approved by the members for the past three years;

(5) All written communications to members generally within the past three years, including the financial statements furnished for the past three years under section 21-19,170;

(6) A list of the names and business or home addresses of its current directors and officers; and

(7) Its most recent biennial report delivered to the Secretary of State under section 21-19,172.

Source: Laws 1996, LB 681, § 165.

21-19,166 Inspection of records by members.

(a) Subject to subsection (e) of this section and subsection (c) of section 21-19,167, a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in subsection (e) of section 21-19,165 if the member gives the corporation written notice or a written demand at least five business days before the date on which the member wishes to inspect and copy.

(b) Subject to subsection (e) of this section, a member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) of this section and gives the corporation written notice at least five business days before the date on which the member wishes to inspect and copy:

(1) Excerpts from any records required to be maintained under subsection (a) of section 21-19,165, to the extent not subject to inspection under subsection (a) of this section;

(2) Accounting records of the corporation; and

(3) Subject to section 21-19,169, the membership list.

(c) A member may inspect and copy the records identified in subsection (b) of this section only if:

(1) The member's demand is made in good faith and for a proper purpose;

(2) The member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(3) The records are directly connected with this purpose.

(d) This section does not affect:

(1) The right of a member to inspect records under section 21-1959 or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

(2) The power of a court, independent of the Nebraska Nonprofit Corporation Act, to compel the production of corporate records for examination.

(e) The articles or bylaws of a religious corporation may limit or abolish the right of a member under this section to inspect and copy any corporate record.

Source: Laws 1996, LB 681, § 166.

21-19,167 Scope of inspection rights.

(a) A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.

(b) The right to copy records under section 21-19,166 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(c) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

(d) The corporation may comply with a member's demand to inspect the record of members under subdivision (b)(3) of section 21-19,166 by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

Source: Laws 1996, LB 681, § 167.

21-19,168 Court-ordered inspection.

(a) If a corporation does not allow a member who complies with subsection (a) of section 21-19,166 to inspect and copy any records required by that subsection to be available for inspection, the district court in the county where the corporation's principal office (or, if none in this state, its registered office) is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(b) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with subsections (b) and (c) of section 21-19,166 may apply to the district court in the county where the corporation's principal office (or, if none in this state, its registered office) is located for an order to permit inspection and copying of the records demanded. The district court shall dispose of an application under this subsection on an expedited basis.

(c) If the district court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(d) If the district court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

Source: Laws 1996, LB 681, § 168.

21-19,169 Limitations on use of membership list.

Without consent of the board, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board a membership list or any part thereof may not be:

(1) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;

(2) Used for any commercial purpose; or

(3) Sold to or purchased by any person.

Source: Laws 1996, LB 681, § 169.

21-19,170 Financial statements for members.

(a) Except as provided in the articles or bylaws of a religious corporation, a corporation, upon written demand from a member, shall furnish that member its latest annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, as appropriate, that include a balance sheet as of the end of the fiscal year and a statement of operations for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If annual financial statements are reported upon by a public accountant, the accountant's report must accompany the statements. If not, the statements

must be accompanied by a statement of the president or the person responsible for the corporation's financial accounting records:

(1) Stating the president's or other person's reasonable belief as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

Source: Laws 1996, LB 681, § 170.

21-19,171 Report of indemnification to members.

If a corporation indemnifies or advances expenses to a director under section 21-1997, 21-1998, 21-1999, or 21-19,100 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members.

Source: Laws 1996, LB 681, § 171.

21-19,172 Biennial report; contents.

(a) Commencing in 1999 and each odd-numbered year thereafter, each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the Secretary of State a biennial report on a form prescribed and furnished by the Secretary of State that sets forth:

(1) The name of the corporation and the state or country under whose law it is incorporated;

(2) The street address of its registered office and the name of its registered agent at the office in this state;

(3) The street address of its principal office;

(4) The names and business or residence addresses of its directors and principal officers;

(5) A brief description of the nature of its activities;

(6) Whether or not it has members;

(7) If it is a domestic corporation, whether it is a public benefit, mutual benefit, or religious corporation; and

(8) If it is a foreign corporation, whether it would be a public benefit, mutual benefit, or religious corporation had it been incorporated in this state.

(b) The information in the biennial report must be current on the date the biennial report is executed on behalf of the corporation.

(c) The first biennial report must be delivered to the Secretary of State between January 1 and April 1 of the odd-numbered year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent biennial reports must be delivered to the Secretary of State between January 1 and April 1 of the following odd-numbered years. For purposes of the Nebraska Nonprofit Corporation Act, the biennial report is due on April 1 of the odd-numbered year in which it must be delivered to the Secretary of State as required by this section.

(d) If a biennial report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty days after the effective date of notice, it is deemed to be timely filed.

(e) Upon the delivery of the biennial report as provided in this section, the Secretary of State shall charge and collect a fee as prescribed in section 21-1905. For purposes of the Nebraska Nonprofit Corporation Act, the fee is due on April 1 of the odd-numbered year in which the biennial report must be delivered to the Secretary of State as required by this section.

(f) Biennial reports shall be filed in 1997 pursuant to sections 21-1981 and 21-1982 (Reissue 1991) as if such sections had not been repealed by Laws 1996, LB 681. Fees, including penalties, due or delinquent prior to 1999 shall be paid pursuant to section 21-1982 (Reissue 1991) as if such section had not been repealed by Laws 1996, LB 681.

Source: Laws 1996, LB 681, § 172.

(p) PUBLICATION

21-19,173 Notice of incorporation, amendment, merger, or dissolution; publication.

(a) Notice of incorporation, amendment, or merger of a domestic corporation subject to the Nebraska Nonprofit Corporation Act shall be published for three successive weeks in some legal newspaper of general circulation in the county where the corporation's principal office or, if none in this state, its registered office is located.

A notice of incorporation shall show (1) the corporate name of the corporation, (2) whether the corporation is a public benefit, mutual benefit, or religious corporation, (3) the street address of the corporation's initial registered office and the name of its initial registered agent at that office, (4) the name and street address of each incorporator, and (5) whether or not the corporation will have members.

A brief resume of any amendment or merger of the corporation shall be published in the same manner for the same period of time as a notice of incorporation is required to be published.

(b) Notice of dissolution of a domestic corporation shall be published for three successive weeks in some legal newspaper of general circulation in the county where the corporation's principal office or, if none in this state, its registered office is located. A notice of dissolution shall show (1) the terms and conditions of such dissolution, (2) the names of the persons who are to wind up and liquidate its affairs and their official titles, and (3) a statement of assets and liabilities of the corporation.

(c) Proof of publication of any of the notices required to be published under this section shall be filed in the office of the Secretary of State. In the event any notice required to be given pursuant to this section is not given, but is subsequently published for the required time, and proof of the subsequent publication thereof is filed in the office of the Secretary of State, the acts of such corporation prior to, as well as after, such publication shall be valid.

Source: Laws 1996, LB 681, § 173.

(q) TRANSITION PROVISIONS

21-19,174 Applicability of act.

The Nebraska Nonprofit Corporation Act applies to all domestic corporations in existence on January 1, 1997, that were incorporated under Chapter 21, article 19 and to any not-for-profit corporations in existence on January 1, 1997, that were heretofore organized under any laws repealed by Laws 1959, LB 349.

Source: Laws 1996, LB 681, § 174.

21-19,175 Foreign corporation; subject to act; effect.

A foreign corporation authorized to transact business in this state on January 1, 1997, is subject to the Nebraska Nonprofit Corporation Act, but is not required to obtain a new certificate of authority to transact business under the act.

Source: Laws 1996, LB 681, § 175.

21-19,176 Repeal of former law; effect.

(a) Except as provided in subsection (b) of this section, the repeal of a statute by Laws 1996, LB 681, shall not affect:

(1) The operation of the statute or any action taken under it before its repeal;

(2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(3) Any violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;

(4) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed; or

(5) Any meeting of members or directors or action by written consent noticed or any action taken before its repeal as a result of a meeting of members or directors or action by written consent.

(b) If a penalty or punishment imposed for violation of a statute repealed by Laws 1996, LB 681, is reduced by the Nebraska Nonprofit Corporation Act, the penalty or punishment, if not already imposed, shall be imposed in accordance with the act.

Source: Laws 1996, LB 681, § 176.

21-19,177 Public benefit, mutual benefit, and religious corporation; designation.

Each domestic corporation existing on January 1, 1997, that is or becomes subject to the Nebraska Nonprofit Corporation Act shall be designated as a public benefit, mutual benefit, or religious corporation as follows:

(1) Any corporation designated by statute as a public benefit corporation, a mutual benefit corporation, or a religious corporation is the type of corporation designated by statute;

(2) Any corporation that does not come within subdivision (1) of this section, but is organized primarily or exclusively for religious purposes, is a religious corporation;

(3) Any corporation that does not come within subdivision (1) or (2) of this section, but is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section, is a public benefit corporation;

(4) Any corporation that does not come within subdivision (1), (2), or (3) of this section, but is organized for a public or charitable purpose, and upon dissolution must distribute its assets to a public benefit corporation, the United States, a state, or a person recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section, is a public benefit corporation; and

(5) Any corporation that does not come within subdivision (1), (2), (3), or (4) of this section is a mutual benefit corporation.

Source: Laws 1996, LB 681, § 177.

ARTICLE 20

BUSINESS CORPORATION ACT

Cross References

For provisions relating to disclosure of confidential information, see section 8-1401.
Subchapter S corporation, taxation, see section 77-2734.01.

(a) GENERAL PROVISIONS

(b) INCORPORATION

(c) PURPOSES AND POWERS

(d) NAME

Section

(l) DISSENTERS' RIGHTS

(m) DISSOLUTION

(n) FOREIGN CORPORATIONS

Section

(o) RECORDS AND REPORTS

(p) PUBLICATION

(q) TRANSITION PROVISIONS

(a) GENERAL PROVISIONS

21-2001 Act, how cited.

Sections 21-2001 to 21-20,193 shall be known and may be cited as the Business Corporation Act.

Source: Laws 1995, LB 109, § 1; Laws 1996, LB 1036, § 4; Laws 2001, LB 138, § 2.

21-2002 Legislative powers.

The Legislature shall have the power to amend or repeal all or part of the Business Corporation Act at any time and all domestic and foreign corporations subject to the act shall be governed by the amendment or repeal.

Source: Laws 1995, LB 109, § 2.

21-2003 Filing requirements.

(1) A document shall satisfy the requirements of this section and of any other provision of law that adds to or varies these requirements to be entitled to filing by the Secretary of State.

(2) The Business Corporation Act shall require or permit filing the document in the office of the Secretary of State.

(3) The document shall contain the information required by the act. It may contain other information as well.

(4) The document shall be typewritten or printed.

(5) The document shall be in the English language. A corporate name shall not be required to be in English if written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations shall not be required to be in English if accompanied by a reasonably authenticated English translation.

(6) The document shall be executed:

(a) By the chairperson of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(7) The person executing the document shall sign it and state beneath or opposite his or her signature his or her name and the capacity in which he or she signs. The document may, but shall not be required to, contain (a) the corporate seal, (b) an attestation by the secretary or an assistant secretary, and (c) an acknowledgment, verification, or proof.

(8) If the Secretary of State has prescribed a mandatory form for the document under section 21-2004, the document shall be in or on the prescribed form.

(9) The document shall be delivered to the Secretary of State for filing and shall be accompanied by one exact or conformed copy, except as provided in sections 21-2033 and 21-20,176, the correct filing fee, and any tax, license fee, or penalty required by law.

Source: Laws 1995, LB 109, § 3.

Cross References

Occupation tax, see Chapter 21, article 3.

21-2004 Forms.

(1) The Secretary of State may prescribe and furnish on request forms for (a) an application for a certificate of existence, (b) a foreign corporation's application for a certificate of authority to transact business in this state, and (c) a foreign corporation's application for a certificate of withdrawal. If the Secretary of State so requires, use of these forms shall be mandatory.

(2) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed by the Business Corporation Act, but the use of such forms shall not be mandatory.

Source: Laws 1995, LB 109, § 4.

21-2005 Fees.

(1) The Secretary of State shall collect the fees prescribed by this section when the documents described in this subsection are delivered to him or her for filing:

(a) Articles of incorporation or documents relating to domestication:

(i) If the capital stock is $10,000 or less, the fee shall be $60;

(ii) If the capital stock is more than $10,000 but does not exceed $25,000, the fee shall be $100;

(iii) If the capital stock is more than $25,000 but does not exceed $50,000, the fee shall be $150;

(iv) If the capital stock is more than $50,000 but does not exceed $75,000, the fee shall be $225;

(v) If the capital stock is more than $75,000 but does not exceed $100,000, the fee shall be $300; and

(vi) If the capital stock is more than $100,000, the fee shall be $300, plus $3 additional for each $1,000 in excess of $100,000.

For purposes of computing this fee, the capital stock of a corporation organized under the laws of any other state that domesticates in this state, and

which stock does not have a par value, shall be deemed to have a par value of an amount per share equal to the amount paid in as capital for each of such shares as are then issued and outstanding, and in no event less than one dollar per share.

(b) Articles of incorporation or documents relating to domestication if filed by an insurer holding a certificate of authority issued by the Director of Insurance, the fee shall be $300.

(c) Application for use of indistinguishable name...$25

(d) Application for reserved name...$25

(e) Notice of transfer of reserved name...$25

(f) Application for registered name...$25

(g) Application for renewal of registered name...$25

(h) Corporation's statement of change of registered agent or registered office or both...$25

(i) Agent's statement of change of registered office for each affected corporation...$25 not to exceed a total of...$1,000

(j) Agent's statement of resignation...No fee

(k) Amendment of articles of incorporation...$25

(l) Restatement of articles of incorporation...$25 with amendment of articles...$25

(m) Articles of merger or share exchange...$25

(n) Articles of dissolution...$45

(o) Articles of revocation of dissolution...$25

(p) Certificate of administrative dissolution...No fee

(q) Application for reinstatement...$25

(r) Certificate of reinstatement...No fee

(s) Certificate of judicial dissolution...No fee

(t) Application for certificate of authority...$130

(u) Application for amended certificate of authority...$25

(v) Application for certificate of withdrawal...$25

(w) Certificate of revocation of authority to transact business...No fee

(x) Articles of correction...$25

(y) Application for certificate of existence or authorization...$25

(z) Any other document required or permitted to be filed by the Business Corporation Act...$25.

(2) The Secretary of State shall collect a recording fee of five dollars per page in addition to the fees set forth in subsection (1) of this section.

(3) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(a) One dollar per page for copying; and

(b) Ten dollars for the certificate.

(4) All fees set forth in this section shall be collected by the Secretary of State and remitted to the State Treasurer and credited two-thirds to the General Fund and one-third to the Corporation Cash Fund.

Source: Laws 1995, LB 109, § 5; Laws 1996, LB 1036, § 5; Laws 2007, LB117, § 1.

21-2006 Effective time and date of filing.

(1) Except as provided in subsection (2) of this section and subsection (3) of section 21-2007, a document accepted for filing shall be effective:

(a) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or

(b) At the time specified in the document as its effective time on the date it is filed.

(2) A document may specify a delayed effective time and date, and if it does so the document shall become effective at the time and date specified. If a delayed effective date but no time is specified, the document shall become effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

Source: Laws 1995, LB 109, § 6.

21-2007 Correcting filed document.

(1) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (a) contains an incorrect statement or (b) was defectively executed, attested, sealed, verified, or acknowledged.

(2) A document shall be corrected:

(a) By preparing articles of correction that (i) describe the document, including its filing date, or attach a copy of it to the articles of correction, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

(b) By delivering the articles of correction to the Secretary of State for filing.

(3) Articles of correction shall be effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the articles of correction shall be effective when filed.

Source: Laws 1995, LB 109, § 7.

21-2008 Secretary of State; filing duty.

(1) If a document delivered to the Secretary of State for filing satisfies the requirements of section 21-2003, the Secretary of State shall file it.

(2) The Secretary of State shall file such document by stamping or otherwise endorsing Filed, together with his or her name and official title and the date and time of receipt, on both the original and the document copy. After filing a document, except as provided in sections 21-2033 and 21-20,176, the Secretary of State shall deliver the document copy with the acknowledgment of receipt of the filing fee, if a fee is required, to the domestic or foreign corporation or its representative.

(3) If the Secretary of State refuses to file a document, he or she shall return it to the domestic or foreign corporation or its representative within five days after the document was delivered, together with a brief, written explanation of the reason for his or her refusal.

(4) The Secretary of State's duty to file documents under this section shall be ministerial. His or her filing or refusal to file a document shall not:

(a) Affect the validity or invalidity of the document in whole or in part;

(b) Relate to the correctness or incorrectness of information contained in the document; or

(c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

Source: Laws 1995, LB 109, § 8.

21-2009 Secretary of State's refusal to file document; appeal.

(1) If the Secretary of State refuses to file a document delivered to his or her office for filing, the domestic or foreign corporation may appeal the refusal within thirty days after the return of the document to the district court of Lancaster County. The appeal shall be commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation of his or her refusal to file.

(2) The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 1995, LB 109, § 9.

21-2010 Evidentiary effect of copy of filed document.

A certificate attached to a copy of a document filed by the Secretary of State, bearing his or her signature, which may be in facsimile, and the seal of this state, shall be conclusive evidence that the original document is on file with the Secretary of State.

Source: Laws 1995, LB 109, § 10.

21-2011 Certificate of existence or authorization.

(1) Anyone may apply to the Secretary of State to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(2) A certificate of existence or authorization shall set forth:

(a) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(b) That (i) the domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual or (ii) the foreign corporation is authorized to transact business in this state;

(c) That no occupation taxes due from and assessable against the corporation are unpaid and have become delinquent;

(d) That no annual report required to be forwarded by the corporation to the Secretary of State has become delinquent; and

(e) That articles of dissolution have not been filed.

(3) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

Source: Laws 1995, LB 109, § 11.

21-2012 Signing false document; penalty.

(1) A person commits an offense if he or she signs a document he or she knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(2) An offense under this section shall be a Class I misdemeanor.

Source: Laws 1995, LB 109, § 12.

21-2013 Secretary of State; powers.

The Secretary of State shall have the power reasonably necessary to perform the duties required of him or her by the Business Corporation Act.

Source: Laws 1995, LB 109, § 13.

21-2014 Terms, defined.

For purposes of the Business Corporation Act, unless the context otherwise requires:

(1) Articles of incorporation shall include amended and restated articles of incorporation and articles of merger;

(2) Authorized shares shall mean the shares of all classes a domestic or foreign corporation is authorized to issue;

(3) Conspicuous shall mean so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, shall be considered conspicuous;

(4) Corporation or domestic corporation shall mean a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of the act;

(5) Deliver shall include mail;

(6) Distribution shall mean a direct or indirect transfer of money or other property, except a corporation's own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend, a purchase, redemption, or other acquisition of shares, a distribution of indebtedness, or otherwise;

(7) Effective date of notice shall have the same meaning as in section 21-2015;

(8) Employee shall include an officer but not a director. A director may accept duties that make him or her also an employee;

(9) Entity shall include corporation and foreign corporation, not-for-profit corporation, limited liability company, profit and not-for-profit unincorporated association, business trust, estate, partnership, trust, two or more persons

having a joint or common economic interest, state, United States, and foreign government;

(10) Foreign corporation shall mean a corporation for profit incorporated under a law other than the law of this state;

(11) Governmental subdivision shall include authority, county, district, and municipality;

(12) Individual shall include the estate of an incompetent or deceased individual;

(13) Notice shall have the same meaning as in section 21-2015;

(14) Person shall include individual and entity;

(15) Principal office shall mean the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located;

(16) Proceeding shall include civil suit or action and criminal, administrative, and investigatory action;

(17) Record date shall mean the date established under sections 21-2035 to 21-2050 or 21-2051 to 21-2077 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of the act. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed;

(18) Secretary shall mean the corporate officer to whom the board of directors has delegated responsibility under subsection (3) of section 21-2097 for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation;

(19) Share shall mean the unit into which the proprietary interests in a corporation are divided;

(20) Shareholder shall mean the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation;

(21) State, when referring to a part of the United States, shall include a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States;

(22) Subscriber shall mean a person who subscribes for shares in a corporation, whether before or after incorporation;

(23) United States shall include district, authority, bureau, commission, department, and any other agency of the United States; and

(24) Voting group shall mean all shares of one or more classes or series that under the articles of incorporation or the act are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or the act to vote generally on the matter are for that purpose a single voting group.

Source: Laws 1995, LB 109, § 14.

21-2015 Notice.

(1) Notice under the Business Corporation Act shall be in writing unless oral notice is reasonable under the circumstances.

(2) Notice may be communicated in person, by telephone, telegraph, teletype, or other form of wire or wireless communication, or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, shall be effective when mailed, if mailed postage prepaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office, shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsection (3) of this section, written notice, if in a comprehensible form, shall be effective at the earliest of the following:

(a) When received;

(b) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postage prepaid and correctly addressed; or

(c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice shall be effective when communicated if communicated in a comprehensible manner.

(7) If the act prescribes notice requirements for particular circumstances, those requirements shall govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of the act, those requirements shall govern.

Source: Laws 1995, LB 109, § 15.

21-2016 Number of shareholders.

(1) For purposes of the Business Corporation Act, the following, identified as a shareholder in a corporation's current record of shareholders, shall constitute one shareholder:

(a) Three or fewer co-owners;

(b) A corporation, partnership, limited liability company, trust, estate, or other entity; and

(c) The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(2) For purposes of the act, shareholdings registered in substantially similar names shall constitute one shareholder if it is reasonable to believe that the names represent the same person.

Source: Laws 1995, LB 109, § 16.

(b) INCORPORATION

21-2017 Incorporators.

One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing.

Source: Laws 1995, LB 109, § 17.

21-2018 Articles of incorporation.

(1) The articles of incorporation shall set forth:

(a) The corporate name for the corporation that satisfies the requirements of section 21-2028;

(b) The number of shares the corporation is authorized to issue and, if such shares are to consist of one class only, the par value of each of such shares or, if such shares are to be divided into classes, the number of shares of each class and a statement of the par value of the shares of each such class;

(c) The street address of the corporation's initial registered office and the name of its initial registered agent at that office;

(d) The name and street address of each incorporator; and

(e) Any provision limiting or eliminating the requirement to hold an annual meeting of the shareholders if the corporation is registered or intends to register as an investment company under the federal Investment Company Act of 1940. The provision shall not be effective if such corporation does not become or ceases to be so registered.

(2) The articles of incorporation may set forth:

(a) The names and street addresses of the individuals who are to serve as the initial directors;

(b) Provisions not inconsistent with law regarding:

(i) The purpose or purposes for which the corporation is organized;

(ii) Managing the business and regulating the affairs of the corporation;

(iii) Defining, limiting, and regulating the powers of the corporation, its board of directors, and its shareholders; and

(iv) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(c) Any provision that under the Business Corporation Act is required or permitted to be set forth in the bylaws;

(d) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for:

(i) The amount of a financial benefit received by a director to which he or she is not entitled;

(ii) An intentional infliction of harm on the corporation or the shareholders;

(iii) A violation of section 21-2096; or

(iv) An intentional violation of criminal law; and

(e) A provision permitting or making obligatory indemnification of a director for liability, as defined in section 21-20,102, to any person for any action taken, or any failure to take any action, as a director, except liability for (i) receipt of a financial benefit to which he or she is not entitled, (ii) an intentional infliction

of harm on the corporation or its shareholders, (iii) a violation of section 21-2096, or (iv) an intentional violation of criminal law.

(3) The articles of incorporation shall not be required to set forth any of the corporate powers enumerated in the act.

Source: Laws 1995, LB 109, § 18.

21-2019 Corporate existence.

(1) Unless a delayed effective date is specified, the corporate existence shall begin when the articles of incorporation are filed.

(2) The Secretary of State's filing of the articles of incorporation shall be conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

Source: Laws 1995, LB 109, § 19.

21-2020 Preincorporation transactions; joint and several liability.

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under the Business Corporation Act, shall be jointly and severally liable for all liabilities created while so acting.

Source: Laws 1995, LB 109, § 20.

This section is not applicable when an individual contracts as an agent of a corporation that was in existence when the contract was executed. Par 3, Inc. v. Livingston, 268 Neb. 636, 686 N.W.2d 369 (2004).

21-2021 Organizational meetings.

(1) After incorporation:

(a) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting at the call of a majority of the directors to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; and

(b) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the corporation; or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by the Business Corporation Act to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

Source: Laws 1995, LB 109, § 21.

21-2022 Bylaws.

(1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(2) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

Source: Laws 1995, LB 109, § 22.

21-2023 Emergency bylaws.

(1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (4) of this section. The emergency bylaws, which shall be subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

(a) Procedures for calling a meeting of the board of directors;

(b) Quorum requirements for the meeting; and

(c) Designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws shall remain effective during the emergency. The emergency bylaws shall not be effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) Shall bind the corporation; and

(b) May not be used to impose liability on a corporate director, officer, employee, or agent.

(4) An emergency shall exist for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Source: Laws 1995, LB 109, § 23.

(c) PURPOSES AND POWERS

21-2024 Corporation; purpose.

(1) Every corporation incorporated under the Business Corporation Act shall have the purpose of engaging in any lawful business unless a more limited purpose shall be set forth in the articles of incorporation.

(2) A corporation engaging in a business subject to regulation under another law of this state may incorporate under the act only if permitted by, and subject to all limitations of, such other law.

(3) Corporations shall not be organized under the act to perform any personal services as specified in section 21-2202.

Source: Laws 1995, LB 109, § 24.

21-2025 Corporation; general powers.

Unless its articles of incorporation provide otherwise, every corporation shall have perpetual duration and succession in its corporate name and shall have the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power to:

(1) Sue and be sued, complain, and defend in its corporate name;

(2) Have a corporate seal, which may be altered at will, and use it or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(3) Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the state, for managing the business and regulating the affairs of the corporation;

(4) Purchase, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(5) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interests in, or obligations of, any other entity;

(7) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, limited liability company, trust, or other entity;

(10) Conduct its business, locate offices, and exercise the powers granted by the Business Corporation Act within or without this state;

(11) Elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(12) Pay pensions and establish pension plans, pension trusts, profit-sharing plans, share-bonus plans, share-option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) Make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) Transact any lawful business that will aid governmental policy; and

(15) Make payments or donations or do any other act not inconsistent with law that furthers the business and affairs of the corporation.

Source: Laws 1995, LB 109, § 25.

21-2026 Corporation; emergency powers.

(1) In anticipation of or during an emergency as defined in subsection (4) of this section, the board of directors of a corporation may:

(a) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(b) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(2) During an emergency as defined in subsection (4) of this section, unless emergency bylaws provide otherwise:

(a) Notice of a meeting of the board of directors shall be given only to those directors to whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(b) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority as necessary to achieve a quorum.

(3) Corporate action taken in good faith during an emergency to further the ordinary business affairs of the corporation:

(a) Shall bind the corporation; and

(b) May not be used to impose liability on a corporate director, officer, employee, or agent.

(4) An emergency shall exist for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Source: Laws 1995, LB 109, § 26.

21-2027 Ultra vires.

(1) Except as provided in subsection (2) of this section, the validity of corporate action may not be challenged on the grounds that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged:

(a) In a proceeding by a shareholder against the corporation to enjoin the act;

(b) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(c) In a proceeding by the Attorney General under section 21-20,162.

(3) In a shareholder's proceeding under subdivision (2)(a) of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable, and if all affected persons are parties to the proceeding. The court may also award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

(4) Venue for a proceeding under subdivision (2)(a) or (2)(b) of this section shall lie in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located.

Source: Laws 1995, LB 109, § 27.

(d) NAME

21-2028 Corporate name.

(1) A corporate name:

(a) Shall contain the word corporation, incorporated, company, or limited, or the abbreviation corp., inc., co., or ltd., or words or abbreviations of like import in another language, except that a corporation organized to conduct a banking business under the Nebraska Banking Act may use a name which includes the word bank without using any such words or abbreviations; and

(b) Shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 21-2024 and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4) of this section, a corporate name shall not be the same as or deceptively similar to, upon the records of the Secretary of State, any of the names referenced in subdivisions (2)(a) through (f) of this section:

(a) The corporate name of a corporation incorporated or authorized to transact business in this state;

(b) A corporate name reserved or registered under section 21-2029 or 21-2030;

(c) The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(d) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) A trade name registered in this state pursuant to sections 87-208 to 87-220; and

(f) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(3) A corporation may apply to the Secretary of State for authorization to use a name that is deceptively similar to, upon his or her records, one or more of the names described in subsection (2) of this section. The Secretary of State shall authorize use of the name applied for if:

(a) The other corporation or business entity consents to the use in writing; or

(b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to transact business in this state and the proposed user corporation has:

(a) Merged with the other corporation or business entity;

(b) Been formed by reorganization of the other corporation or business entity; or

(c) Acquired all or substantially all of the assets, including the name, of the other corporation or business entity.

(5) The Business Corporation Act shall not be construed to control the use of fictitious names.

Source: Laws 1995, LB 109, § 28; Laws 1997, LB 44, § 5; Laws 1997, LB 453, § 3; Laws 1998, LB 1321, § 76; Laws 2003, LB 464, § 4.

Cross References

Nebraska Banking Act, see section 8-101.01.

21-2029 Reserved name.

(1) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for

is available, he or she shall reserve the name for the applicant's exclusive use for a nonrenewable one-hundred-twenty-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

Source: Laws 1995, LB 109, § 29.

21-2030 Registered name.

(1) A foreign corporation may register its corporate name or its corporate name with any addition required by section 21-20,173 if the name is not the same as or deceptively similar to, upon the records of the Secretary of State, the corporate names that are not available under subdivision (2)(c) of section 21-2028.

(2) A foreign corporation shall register its corporate name or its corporate name with any addition required by section 21-20,173 by delivering to the Secretary of State for filing an application:

(a) Setting forth its corporate name or its corporate name with any addition required by section 21-20,173, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

(b) Accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is filed in this state.

(3) The name shall be registered for the applicant's exclusive use upon the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application which complies with the requirements of subsection (2) of this section between October 1 and December 31 of the preceding year. The renewal application shall renew the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation thereafter incorporated under the Business Corporation Act or by another foreign corporation thereafter authorized to transact business in this state. The registration shall terminate when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

Source: Laws 1995, LB 109, § 30; Laws 2003, LB 464, § 5.

(e) OFFICE AND AGENT

21-2031 Registered office and registered agent.

Each corporation shall continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(a) An individual who resides in this state and whose business office is identical with the registered office;

(b) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(c) A foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

Source: Laws 1995, LB 109, § 31.

21-2032 Change of registered office or registered agent.

(1) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(a) The name of the corporation;

(b) The street address of its current registered office;

(c) If the current registered office is to be changed, the street address of the new registered office;

(d) The name of its current registered agent;

(e) If the current registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent, either on the statement or attached to it, to the appointment; and

(f) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of his or her business office, he or she may change the street address of the registered office of any corporation for which he or she is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

Source: Laws 1995, LB 109, § 32.

21-2033 Resignation of registered agent.

(1) A registered agent may resign his or her agency appointment by signing and delivering to the Secretary of State for filing the signed original and two exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(2) After filing the statement the Secretary of State shall mail one copy to the registered office, if not discontinued, and the other copy to the corporation at its principal office.

(3) The agency appointment shall be terminated and the registered office discontinued, if so provided, on the thirty-first day after the date on which the statement was filed.

Source: Laws 1995, LB 109, § 33.

21-2034 Service on corporation.

(1) A corporation's registered agent shall be the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(2) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service shall be perfected under this subsection at the earliest of:

(a) The date the corporation receives the mail;

(b) The date shown on the return receipt, if signed on behalf of the corporation; or

(c) Five days after its deposit in the United States mail as evidenced by the postmark, if mailed postage prepaid and correctly addressed.

(3) This section shall not be construed to prescribe the only means, or necessarily the required means, of serving a corporation.

Source: Laws 1995, LB 109, § 34.

(f) SHARES AND DISTRIBUTIONS

21-2035 Authorized shares.

(1) The articles of incorporation shall prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class, and prior to the issuance of shares of a class the preferences, limitations, and relative rights of that class shall be described in the articles of incorporation. All shares of a class shall have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by section 21-2036.

(2) The articles of incorporation shall authorize (a) one or more classes of shares that together have unlimited voting rights and (b) one or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

(3) The articles of incorporation may authorize one or more classes of shares that:

(a) Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by the Business Corporation Act;

(b) Are redeemable or convertible as specified in the articles of incorporation (i) at the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event, (ii) for cash, indebtedness, securities, or other property, or (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(c) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(d) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(4) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (3) of this section shall not be exhaustive.

Source: Laws 1995, LB 109, § 35.

21-2036 Class or series of shares; determined by board of directors.

(1) If the articles of incorporation so provide, the board of directors may determine, in whole or in part, the preferences, limitations, and relative rights, within the limits set forth in section 21-2035, of (a) any class of shares before the issuance of any shares of that class or (b) one or more series within a class before the issuance of any shares of that series.

(2) Each series of a class shall be given a distinguishing designation.

(3) All shares of a series shall have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(4) Before issuing any shares of a class or series created under this section, the corporation shall deliver to the Secretary of State for filing articles of amendment, which shall be effective without shareholder action, that set forth:

(a) The name of the corporation;

(b) The text of the amendment determining the terms of the class or series of shares;

(c) The date the amendment was adopted; and

(d) A statement that the amendment was duly adopted by the board of directors.

Source: Laws 1995, LB 109, § 36.

21-2037 Issued and outstanding shares.

(1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued shall be outstanding shares until they are reacquired, redeemed, converted, or canceled.

(2) The reacquisition, redemption, or conversion of outstanding shares shall be subject to the limitations of subsection (3) of this section and to section 21-2050.

(3) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution shall be outstanding.

Source: Laws 1995, LB 109, § 37.

21-2038 Fractional shares.

(1) A corporation may:

(a) Issue fractions of a share or pay in money the value of fractions of a share;

(b) Arrange for disposition of fractional shares by the shareholders; and

(c) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(2) Each certificate representing scrip shall be conspicuously labeled scrip and shall contain the information required by subsection (2) of section 21-2044.

(3) The holder of a fractional share shall be entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip shall not be entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

(a) That the scrip will become void if not exchanged for full shares before a specified date; and

(b) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

Source: Laws 1995, LB 109, § 38.

21-2039 Subscription for shares before incorporation.

(1) A subscription for shares entered into before incorporation shall be irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(2) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies such terms. A call for payment by the board of directors shall be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(3) Shares issued pursuant to subscriptions entered into before incorporation shall be considered fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(4) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty days after the corporation sends written demand for payment to the subscriber.

(5) A subscription agreement entered into after incorporation shall be a contract between the subscriber and the corporation subject to section 21-2040.

Source: Laws 1995, LB 109, § 39.

21-2040 Issuance of shares.

(1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(3) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for shares to be issued is

adequate. Such determination by the board of directors shall be conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor shall be considered fully paid and nonassessable.

(5) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note or make other arrangements to restrict the transfer of the shares and may credit distributions in respect of the shares against their purchase price until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or in part.

Source: Laws 1995, LB 109, § 40.

21-2041 Liability of shareholders.

(1) A purchaser from a corporation of its own shares shall not be liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued pursuant to section 21-2040 or specified in the subscription agreement pursuant to section 21-2039.

(2) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation shall not be personally liable for the acts or debts of the corporation, except that he or she may become personally liable by reason of his or her own acts or conduct.

Source: Laws 1995, LB 109, § 41.

A court will disregard a corporation's identity and hold shareholders personally liable where the corporation has been used to commit fraud, violate a legal duty, or perpetrate a dishonest or unjust act in contravention of the rights of another. Victory Lake Marine, Inc. v. Velduis, 9 Neb. App. 815, 621 N.W.2d 306 (2000).

21-2042 Share dividends.

(1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection shall be a share dividend.

(2) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless (a) the articles of incorporation so authorize, (b) a two-thirds majority of the votes entitled to be cast by the class or series to be issued approve the issue, or (c) there are no outstanding shares of the class or series to be issued.

(3) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date shall be the date the board of directors authorizes the share dividend.

Source: Laws 1995, LB 109, § 42.

21-2043 Share options.

A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms

upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued.

Source: Laws 1995, LB 109, § 43.

21-2044 Form and content of certificates.

(1) Shares may but shall not be required to be represented by certificates. Unless the Business Corporation Act or another law expressly provides otherwise, the rights and obligations of shareholders shall be identical whether or not their shares are represented by certificates.

(2) At a minimum, each share certificate shall state on its face:

(a) The name of the issuing corporation and that it is organized under the laws of this state;

(b) The name of the person to whom issued; and

(c) The number and class of shares and the designation of the series, if any, the certificate represents.

(3) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class, the variations in rights, preferences, and limitations determined for each series, and the authority of the board of directors to determine variations for future series, shall be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(4) Each share certificate (a) shall be signed, either manually or in facsimile, by two officers designated in the bylaws or by the board of directors and (b) may bear the corporate seal or its facsimile.

(5) If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

Source: Laws 1995, LB 109, § 44.

21-2045 Shares without certificates.

(1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization shall not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by subsections (2) and (3) of section 21-2044 and, if applicable, section 21-2046.

Source: Laws 1995, LB 109, § 45.

21-2046 Restriction on transfer or registration of shares or other securities.

(1) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction shall not affect shares issued before the restriction was adopted

unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(2) A restriction on the transfer or registration of transfer of shares shall be valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by subsection (2) of section 21-2045. Unless so noted, a restriction shall not be enforceable against a person without knowledge of the restriction.

(3) A restriction on the transfer or registration of transfer of shares shall be authorized:

(a) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(b) To preserve exemptions under federal or state securities law or under the Internal Revenue Code; or

(c) For any other reasonable purpose.

(4) A restriction on the transfer or registration of transfer of shares may:

(a) Obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(b) Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;

(c) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares if the requirement is not manifestly unreasonable; or

(d) Prohibit the transfer of the restricted shares to designated persons or classes of persons if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, shares shall include a security convertible into or carrying a right to subscribe for or acquire shares.

Source: Laws 1995, LB 109, § 46.

21-2047 Payment of expenses.

A corporation may pay the expenses of selling or underwriting its shares and of organizing or reorganizing the corporation from the consideration received for shares.

Source: Laws 1995, LB 109, § 47.

21-2048 Shareholders' preemptive rights.

(1) The shareholders of a corporation shall not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide. The shareholders of a corporation organized prior to January 1, 1996, shall continue to have a preemptive right to acquire the corporation's unissued shares in the manner provided in this section if the articles of incorporation of the corporation did not, on or after January 1, 1996, expressly eliminate such preemptive rights to its shareholders.

(2) A statement included in the articles of incorporation that the corporation elects to have preemptive rights, or words of similar import, shall mean that the

following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(a) The shareholders of the corporation shall have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors, to provide a fair and reasonable opportunity to exercise the right to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them;

(b) A shareholder may waive his or her preemptive right. A waiver evidenced by a writing shall be irrevocable even though it is not supported by consideration;

(c) There shall be no preemptive right with respect to:

(i) Shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates;

(ii) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates;

(iii) Shares authorized in articles of incorporation that are issued within six months from the effective date of incorporation; or

(iv) Shares sold otherwise than for money;

(d) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets shall have no preemptive rights with respect to shares of any class;

(e) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets shall have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights; and

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year shall be subject to the shareholders' preemptive rights.

(3) For purposes of this section, shares shall include a security convertible into or carrying a right to subscribe for or acquire shares.

Source: Laws 1995, LB 109, § 48; Laws 1996, LB 681, § 181.

21-2049 Corporation's acquisition of own shares.

(1) A corporation may acquire its own shares and shares so acquired shall constitute authorized but unissued shares.

(2) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares shall be reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

(3) The board of directors may adopt articles of amendment under this section without shareholder action and deliver them to the Secretary of State for filing. The articles shall set forth:

(a) The name of the corporation;

(b) The reduction in the number of authorized shares, itemized by class and series; and

(c) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

Source: Laws 1995, LB 109, § 49.

21-2050 Distributions to shareholders.

(1) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (3) of this section.

(2) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase redemption or other acquisition of the corporation's shares, the record date shall be the date the board of directors authorizes the distribution.

(3) No distribution may be made if, after giving it effect:

(a) The corporation would not be able to pay its debts as they become due in the usual course of business; or

(b) The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(4) The board of directors may base a determination that a distribution is not prohibited under subsection (3) of this section either on financial statements prepared on the basis of generally accepted accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(5) Except as provided in subsection (7) of this section, the effect of a distribution under subsection (3) of this section shall be measured:

(a) In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of (i) the date money or other property is transferred or debt incurred by the corporation or (ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(b) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(c) In all other cases, as of (i) the date the distribution is authorized if the payment occurs within one hundred twenty days after the date of authorization or (ii) the date the payment is made if it occurs more than one hundred twenty days after the date of authorization.

(6) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section shall be at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(7) Indebtedness of a corporation, including indebtedness issued as a distribution, shall not be considered a liability for purposes of determination under subsection (3) of this section if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to

shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest shall be treated as a distribution, the effect of which shall be measured on the date the payment is actually made.

Source: Laws 1995, LB 109, § 50.

(g) SHAREHOLDERS

21-2051 Annual meeting.

(1) A corporation shall hold annually, at a time stated in or fixed in accordance with the bylaws, a meeting of shareholders.

(2) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(3) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws shall not affect the validity of any corporate action.

(4) Notwithstanding the provisions of this section, a corporation registered as an investment company under the federal Investment Company Act of 1940, which, pursuant to section 21-2018, has included in its articles of incorporation a provision limiting or eliminating the requirement to hold an annual meeting of the shareholders, shall not be required to hold an annual meeting of the shareholders except as provided in such articles of incorporation or as otherwise required by the federal Investment Company Act of 1940, and the rules and regulations adopted and promulgated under such act.

Source: Laws 1995, LB 109, § 51.

21-2052 Special meeting.

(1) A corporation shall hold a special meeting of shareholders:

(a) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(b) If the holders of at least ten percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(2) If not otherwise fixed under section 21-2053 or 21-2057, the record date for determining shareholders entitled to demand a special meeting shall be the date the first shareholder signs the demand.

(3) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(4) Only business within the purpose or purposes described in the meeting notice required by subsection (3) of section 21-2055 may be conducted at a special shareholders' meeting.

Source: Laws 1995, LB 109, § 52.

21-2053 Court-ordered meeting.

(1) The district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located, may summarily order a meeting to be held:

(a) On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting; or

(b) On application of a shareholder who signed a demand for a special meeting valid under section 21-2052 if:

(i) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary; or

(ii) The special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

Source: Laws 1995, LB 109, § 53.

21-2054 Action without meeting.

(1) Action required or permitted by the Business Corporation Act to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action shall be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise determined under section 21-2053 or 21-2057, the record date for determining shareholders entitled to take action without a meeting shall be the date the first shareholder signs the consent under subsection (1) of this section.

(3) A consent signed under this section shall have the effect of a meeting vote and may be described as such in any document.

(4) If the act requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the proposed action at least ten days before the action is taken. The notice shall contain or be accompanied by the same material that, under the act, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

Source: Laws 1995, LB 109, § 54.

21-2055 Notice of meeting.

(1) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than ten nor more

than sixty days before the meeting date. Unless the Business Corporation Act or the articles of incorporation require otherwise, the corporation shall be required to give notice only to shareholders entitled to vote at the meeting.

(2) Unless the act or the articles of incorporation require otherwise, notice of an annual meeting shall not be required to include a description of the purpose or purposes for which the meeting is called.

(3) Notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called.

(4) If not otherwise fixed under section 21-2053 or 21-2057, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting shall be the day before the first notice is delivered to shareholders.

(5) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice shall not be required to be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or is required to be fixed under section 21-2057, however, notice of the adjourned meeting shall be given under this section to persons who are shareholders as of the new record date.

Source: Laws 1995, LB 109, § 55.

21-2056 Waiver of notice.

(1) A shareholder may waive any notice required by the Business Corporation Act, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver shall be in writing, shall be signed by the shareholder entitled to the notice, and shall be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A shareholder's attendance at a meeting:

(a) Waives objection to lack of notice or defective notice of the meeting unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(b) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice unless the shareholder objects to considering the matter when it is presented.

Source: Laws 1995, LB 109, § 56.

21-2057 Record date.

(1) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(2) A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of shareholders.

(3) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting shall be effective for any adjournment of the meeting unless the board of directors fixes a new record date, which the board shall do

if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

(4) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, the court may provide that the original record date shall continue in effect or it may fix a new record date.

Source: Laws 1995, LB 109, § 57.

21-2058 Shareholders' list for meeting.

(1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list shall be arranged by voting group, and within each voting group by class or series of shares, and shall show the address of and number of shares held by each shareholder.

(2) The shareholders' list shall be available for inspection by any shareholder, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, his or her agent, or his or her attorney shall be entitled on written demand to inspect and, subject to the requirements of subsection (3) of section 21-20,183, to copy the shareholders' list during regular business hours and at his or her expense during the period it is available for inspection.

(3) The corporation shall make the shareholders' list available at the meeting and any shareholder, his or her agent, or his or her attorney shall be entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a shareholder, his or her agent, or his or her attorney to inspect the shareholders' list before or at the meeting or to copy the list as permitted by subsection (2) of this section, the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the shareholders' list was prepared until the inspection or copying is complete.

(5) Refusal or failure to prepare or make available the shareholders' list shall not affect the validity of action taken at the meeting.

Source: Laws 1995, LB 109, § 58.

21-2059 Voting entitlement of shares.

(1) Except as provided in subsections (2) and (3) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, shall be entitled to one vote on each matter voted on at a shareholders' meeting. Only shares shall be entitled to vote.

(2) Absent special circumstances, the shares of a corporation shall not be entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(3) Subsection (2) of this section shall not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(4) Redeemable shares shall not be entitled to vote after notice of redemption has been mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price upon surrender of the shares.

Source: Laws 1995, LB 109, § 59.

21-2060 Proxies.

(1) A shareholder may vote his or her shares in person or by proxy.

(2) A shareholder may appoint a proxy to vote or otherwise act for him or her by signing an appointment form either personally or by his or her attorney in fact.

(3) An appointment of a proxy shall be effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment shall be valid for eleven months unless a longer period is expressly provided in the appointment form.

(4) An appointment of a proxy shall be revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest shall include the appointment of:

(a) A pledgee;

(b) A person who purchased or agreed to purchase the shares;

(c) A creditor of the corporation who extended it credit under terms requiring the appointment;

(d) An employee of the corporation whose employment contract requires the appointment; or

(e) A party to a voting agreement created under section 21-2068.

(5) The death or incapacity of the shareholder appointing a proxy shall not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his or her authority under the appointment.

(6) An appointment made irrevocable under subsection (4) of this section shall be revoked when the interest with which it is coupled is extinguished.

(7) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he or she did not know of its existence when he or she acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to section 21-2062 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation shall be entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Source: Laws 1995, LB 109, § 60.

21-2061 Shares held by nominees.

(1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(2) The procedure may set forth:

(a) The types of nominees to which it applies;

(b) The rights or privileges that the corporation recognizes in a beneficial owner;

(c) The manner in which the procedure is selected by the nominee;

(d) The information that shall be provided when the procedure is selected;

(e) The period for which selection of the procedure is effective; and

(f) Other aspects of the rights and duties created.

Source: Laws 1995, LB 109, § 61.

21-2062 Corporation's acceptance of notes.

(1) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, shall be entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of a shareholder, the corporation, if acting in good faith, shall nevertheless be entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

(a) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(c) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(d) The name signed purports to be that of a pledgee, beneficial owner, or attorney in fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(e) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(3) The corporation shall be entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has a reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section shall not be liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section shall be valid unless a court of competent jurisdiction determines otherwise.

Source: Laws 1995, LB 109, § 62.

21-2063 Voting groups; quorum and voting requirements.

(1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or the Business Corporation Act provides otherwise, a majority of the votes entitled to be cast on the matter by the voting group shall constitute a quorum of that voting group for action on that matter.

(2) Once a share is represented for any purpose at a meeting it shall be deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or shall be set for that adjourned meeting.

(3) If a quorum exists, action on a matter, other than the election of directors, by a voting group shall be approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action unless the articles of incorporation or the act requires a greater number of affirmative votes.

(4) An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (2) or (3) of this section shall be governed by section 21-2065.

(5) The election of directors shall be governed by section 21-2066.

Source: Laws 1995, LB 109, § 63.

21-2064 Action by single and multiple voting groups.

(1) If the articles of incorporation or the Business Corporation Act provides for voting by a single voting group on a matter, action on that matter shall be taken when voted upon by that voting group as provided in section 21-2063.

(2) If the articles of incorporation or the act provides for voting by two or more voting groups on a matter, action on that matter shall be taken only when voted upon by each of those voting groups counted separately as provided in section 21-2063. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

Source: Laws 1995, LB 109, § 64.

21-2065 Greater quorum or voting requirements.

(1) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is provided for by the Business Corporation Act.

(2) An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement shall meet the same quorum

requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

Source: Laws 1995, LB 109, § 65.

21-2066 Voting for directors; cumulative voting.

(1) Unless otherwise provided in the articles of incorporation, directors shall be elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(2) In all elections for directors, every shareholder entitled to vote at such elections shall have the right to vote in person or by proxy for the number of shares owned by him or her, for as many persons as there are directors to be elected or to cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of his or her shares shall equal, or to distribute them upon the same principle among as many candidates as he or she thinks fit, and such directors shall not be elected in any other manner.

Source: Laws 1995, LB 109, § 66.

Cross References

Cumulative voting for directors, see Article XII, section 1, Constitution of Nebraska.

21-2067 Voting trusts.

(1) One or more shareholders may create a voting trust conferring on a trustee the right to vote or otherwise act for them by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(2) A voting trust shall become effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust shall be valid for not more than ten years after its effective date unless extended under subsection (3) of this section.

(3) All or some of the parties to a voting trust may extend it for additional terms of not more than ten years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension shall be valid for ten years from the date the first shareholder signs the extension agreement. The voting trustee shall deliver copies of the extension agreement and a list of beneficial owners to the corporation's principal office. An extension agreement shall bind only those parties signing it.

Source: Laws 1995, LB 109, § 67.

21-2068 Voting agreements.

(1) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section shall not be subject to the provisions of section 21-2067.

(2) A voting agreement created under this section shall be specifically enforceable.

Source: Laws 1995, LB 109, § 68.

21-2069 Shareholder agreements.

(1) An agreement among the shareholders of a corporation that complies with this section shall be effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of the Business Corporation Act in that it:

(a) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(b) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in section 21-2050;

(c) Establishes who shall be directors or officers of the corporation or their terms of office or manner of selection or removal;

(d) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(e) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation, or among any of them;

(f) Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(g) Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or

(h) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation, or among any of them, and is not contrary to public policy.

(2) An agreement authorized by this section shall be:

(a) Set forth (i) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement or (ii) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and the agreement is made known to the corporation;

(b) Subject to amendment only by all persons who are shareholders at the time of the amendment unless the agreement provides otherwise; and

(c) Valid for ten years unless the agreement provides otherwise.

(3) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by subsection (2) of section 21-2045. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any

purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection shall be commenced within the earlier of ninety days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

(4) An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws without shareholder action to delete the agreement and any references to it.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section shall not be grounds for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

Source: Laws 1995, LB 109, § 69.

21-2070 Derivative proceedings; terms, defined.

For purposes of sections 21-2070 to 21-2077:

(1) Derivative proceeding shall mean a civil suit or action in the right of a domestic corporation or, to the extent provided in section 21-2077, in the right of a foreign corporation; and

(2) Shareholder shall include a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

Source: Laws 1995, LB 109, § 70.

21-2071 Derivative proceedings; standing.

A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) Was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at such time; and

(2) Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

Source: Laws 1995, LB 109, § 71.

21-2072 Derivative proceedings; demand; venue.

(1) No shareholder may commence a derivative proceeding until:

(a) A written demand has been made upon the corporation to take suitable action; and

(b) Ninety days have expired from the date the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety-day period.

(2) Venue for a proceeding under this section shall lie in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located.

Source: Laws 1995, LB 109, § 72.

21-2073 Derivative proceedings; stay.

If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

Source: Laws 1995, LB 109, § 73.

21-2074 Derivative proceedings; dismissal.

(1) A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsection (2) or (6) of this section has determined, in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(2) Unless a panel is appointed pursuant to subsection (6) of this section, the determination in subsection (1) of this section shall be made by:

(a) A majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum; or

(b) A majority vote of a committee consisting of two or more independent directors appointed by a majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors constituted a quorum.

(3) None of the following shall by itself cause a director to be considered not independent for purposes of this section:

(a) The nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;

(b) The naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded; or

(c) The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

(4) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with

particularity facts establishing either (a) that a majority of the board of directors did not consist of independent directors at the time the determination was made or (b) that the requirements of subsection (1) of this section have not been met.

(5) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation shall have the burden of proving that the requirements of subsection (1) of this section have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff shall have the burden of proving that the requirements of subsection (1) of this section have not been met.

(6) The court may appoint a panel of one or more independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of subsection (1) of this section have not been met.

Source: Laws 1995, LB 109, § 74.

21-2075 Derivative proceedings; discontinuance or settlement.

A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

Source: Laws 1995, LB 109, § 75.

21-2076 Derivative proceedings; payment of expenses.

On termination of the derivative proceeding the court may:

(1) Order the corporation to pay the plaintiff's reasonable expenses, including attorney's fees, incurred in the proceeding if the court finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) Order the plaintiff to pay any defendant's reasonable expenses, including attorney's fees, incurred in defending the proceeding if the court finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(3) Order a party to pay an opposing party's reasonable expenses, including attorney's fees, incurred because of the filing of a pleading, motion, or other paper, if the court finds that the pleading, motion, or other paper was not well-grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and was interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Source: Laws 1995, LB 109, § 76.

Subdivision (1) of this section does not authorize a court to order payment of fees by individual defendants. Trieweiler v. Sears, 268 Neb. 952, 689 N.W.2d 807 (2004).

Subdivision (3) of this section is directed at the conduct of litigation, not at the underlying wrongful conduct of the defendants. Trieweiler v. Sears, 268 Neb. 952, 689 N.W.2d 807 (2004).

21-2077 Derivative proceedings; applicability to foreign corporations.

In any derivative proceeding in the right of a foreign corporation, the matters covered by sections 21-2070 to 21-2077 shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for sections 21-2073, 21-2075, and 21-2076.

Source: Laws 1995, LB 109, § 77.

(h) DIRECTORS AND OFFICERS

21-2078 Board of directors; duties.

(1) Except as provided in section 21-2069, each corporation shall have a board of directors.

(2) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under section 21-2069.

Source: Laws 1995, LB 109, § 78.

21-2079 Qualifications of directors.

The articles of incorporation or bylaws may prescribe qualifications for directors. A director shall not be required to be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

Source: Laws 1995, LB 109, § 79.

21-2080 Number and election of directors.

(1) A board of directors shall consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) If a board of directors has power to fix or change the number of directors, the board may increase or decrease by thirty percent or less the number of directors last approved by the shareholders, but only the shareholders may increase or decrease by more than thirty percent the number of directors last approved by the shareholders.

(3) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable-range size board or vice versa.

(4) Directors shall be elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under section 21-2083.

(5) If a corporation is registered as an investment company under the federal Investment Company Act of 1940, and, pursuant to section 21-2018, has included in its articles of incorporation a provision limiting or eliminating the requirement to hold an annual meeting of the shareholders, the initial directors shall be elected at the first meeting of the shareholders after such provision limiting or eliminating such meeting is included in the articles of incorporation,

and thereafter the election of directors by shareholders shall not be required unless required by the federal Investment Company Act of 1940, or the rules and regulations under such act or otherwise required by the Business Corporation Act.

Source: Laws 1995, LB 109, § 80.

21-2081 Election of directors by classes of shareholders.

If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. A class or classes of shares entitled to elect one or more directors is a separate voting group for purposes of election of directors.

Source: Laws 1995, LB 109, § 81.

21-2082 Terms of directors.

(1) The terms of the initial directors of a corporation shall expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors shall expire at the next annual shareholders' meeting following their election unless their terms are staggered under section 21-2083.

(3) A decrease in the number of directors shall not shorten an incumbent director's term.

(4) The term of a director elected to fill a vacancy shall expire at the next shareholders' meeting at which directors are elected.

(5) Despite the expiration of a director's term, he or she shall continue to serve until his or her successor is elected and qualifies or until there is a decrease in the number of directors.

Source: Laws 1995, LB 109, § 82.

21-2083 Staggered terms of directors.

The articles of incorporation may provide for staggering the terms of the directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group shall expire at the first annual shareholders' meeting after their election, the terms of the second group shall expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, shall expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

Source: Laws 1995, LB 109, § 83.

21-2084 Resignation of directors.

(1) A director may resign at any time by delivering written notice to the board of directors, to its chairperson, or to the corporation.

(2) The resignation shall be effective when notice is delivered unless the notice specifies a later effective date.

Source: Laws 1995, LB 109, § 84.

21-2085 Removal of directors by shareholders.

(1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him or her.

(3) A director may not be removed if the number of votes sufficient to elect him or her under cumulative voting is voted against his or her removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove him or her exceeds the number of votes cast not to remove him or her.

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director and the meeting notice shall state that the purpose or one of the purposes of the meeting is removal of the director.

Source: Laws 1995, LB 109, § 85.

21-2086 Removal of directors by judicial proceeding.

(1) The district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located, may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least ten percent of the outstanding shares of any class if the court finds that (a) the director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the corporation and (b) removal is in the best interests of the corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(3) If shareholders commence a proceeding under subsection (1) of this section, they shall make the corporation a party defendant.

Source: Laws 1995, LB 109, § 86.

21-2087 Vacancy on board of directors.

(1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) The shareholders may fill the vacancy;

(b) The board of directors may fill the vacancy; or

(c) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group shall be entitled to vote to fill the vacancy if it is filled by the shareholders.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under subsection (2) of section 21-2084 or

otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

Source: Laws 1995, LB 109, § 87.

21-2088 Compensation of directors.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

Source: Laws 1995, LB 109, § 88.

21-2089 Board of directors; meetings.

(1) The board of directors may hold regular or special meetings in or out of this state.

(2) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means shall be deemed to be present in person at the meeting.

Source: Laws 1995, LB 109, § 89.

21-2090 Action without meeting.

(1) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by the Business Corporation Act to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action shall be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(2) Action taken under this section shall be effective when the last director signs the consent, unless the consent specifies a different effective date.

(3) A consent signed under this section shall have the effect of a meeting vote and may be described as such in any document.

Source: Laws 1995, LB 109, § 90.

21-2091 Notice of meeting.

(1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least two days' notice of the date, time, and place of the meeting. The notice shall not be required to describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

Source: Laws 1995, LB 109, § 91.

21-2092 Waiver of notice.

(1) A director may waive any notice required by the Business Corporation Act, the articles of incorporation, or the bylaws before or after the date and time stated in the notice. Except as provided by subsection (2) of this section,

the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless the director at the beginning of the meeting or promptly upon his or her arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Source: Laws 1995, LB 109, § 92.

21-2093 Quorum and voting.

(1) Unless the articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in the Business Corporation Act, a quorum of a board of directors shall consist of:

(a) A majority of the fixed number of directors if the corporation has a fixed board size; or

(b) A majority of the number of directors prescribed or, if no number is prescribed, the number in office immediately before the meeting begins if the corporation has a variable-range board size.

(2) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined under subsection (1) of this section.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present shall be the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(4) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken shall be deemed to have assented to the action taken unless (a) he or she objects at the beginning of the meeting or promptly upon his or her arrival to holding it or transacting business at the meeting, (b) his or her dissent or abstention from the action taken is entered in the minutes of the meeting, or (c) he or she delivers written notice of his or her dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention shall not be available to a director who votes in favor of the action taken.

Source: Laws 1995, LB 109, § 93.

21-2094 Committees.

(1) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee may have two or more members who serve at the pleasure of the board of directors.

(2) The creation of a committee and appointment of members to it shall be approved by the greater of (a) a majority of all the directors in office when the action is taken or (b) the number of directors required by the articles of incorporation or bylaws to take action under section 21-2093.

(3) Sections 21-2089 to 21-2093 which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors shall apply to committees and their members as well.

(4) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under section 21-2078.

(5) A committee may not, however:

(a) Authorize distributions;

(b) Approve or propose to shareholders action that the Business Corporation Act requires be approved by shareholders;

(c) Fill vacancies on the board of directors or on any of its committees;

(d) Amend articles of incorporation pursuant to section 21-20,117;

(e) Adopt, amend, or repeal bylaws;

(f) Approve a plan of merger not requiring shareholder approval;

(g) Authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors; or

(h) Authorize or approve the issuance or sale or contract for sale of shares or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee or a senior executive officer of the corporation to do so within limits specifically prescribed by the board of directors.

(6) The creation of, delegation of authority to, or action by a committee shall not alone constitute compliance by a director with the standards of conduct described in section 21-2095.

Source: Laws 1995, LB 109, § 94.

21-2095 Standards of conduct for directors.

(1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he or she reasonably believes to be in the best interests of the corporation.

A director may, but need not, in considering the best interests of the corporation, consider, among other things, the effects of any action on employees, suppliers, creditors, and customers of the corporation and communities in which offices or other facilities of the corporation are located.

(2) In discharging his or her duties, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(c) A committee of the board of directors of which he or she is not a member if the director reasonably believes the committee merits confidence.

(3) A director shall not be considered to be acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director shall not be liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

Source: Laws 1995, LB 109, § 95; Laws 2007, LB191, § 1.

An ordinarily prudent person ''in a like position'', within the meaning of this section, is an ordinarily prudent person who was the director of the particular corporation. Trieweiler v. Sears, 268 Neb. 952, 689 N.W.2d 807 (2004).

The phrase ''under similar circumstances'', as used in this section, means that a court should take account of the director's responsibilities in the corporation, the information available at the time, and the special background knowledge or expertise the director has. Trieweiler v. Sears, 268 Neb. 952, 689 N.W.2d 807 (2004).

In a derivative action brought by a minority shareholder, the directors have the burden to establish the fairness and reasonableness of their operation of the corporation. Sadler v. Jorad, Inc., 268 Neb. 60, 680 N.W.2d 165 (2004).

In a derivative action brought by a minority shareholder, the directors were required to show that the actions they took were performed in good faith, with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in a manner that they reasonably believed to be in the best interests of the corporation. Sadler v. Jorad, Inc., 268 Neb. 60, 680 N.W.2d 165 (2004).

21-2096 Director; liability for unlawful distributions.

(1) A director who votes for or assents to a distribution made in violation of section 21-2050 or the articles of incorporation shall be personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating section 21-2050 or the articles of incorporation if it is established that he or she did not perform his or her duties in compliance with section 21-2095. In any proceeding commenced under this section, a director shall have all of the defenses ordinarily available to a director.

(2) A director held liable under subsection (1) of this section for an unlawful distribution shall be entitled to contribution:

(a) From every other director who could be liable under subsection (1) of this section for the unlawful distribution; and

(b) From each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of section 21-2050 or the articles of incorporation.

(3) A proceeding under this section shall be barred unless it is commenced within two years after the date on which the effect of the distribution was measured under subsection (5) or (7) of section 21-2050.

Source: Laws 1995, LB 109, § 96.

21-2097 Required officers.

(1) A corporation shall have the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(2) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall delegate to one of the officers the responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

(4) The same individual may simultaneously hold more than one office in a corporation.

Source: Laws 1995, LB 109, § 97.

A receiver is an officer of the court and, thus, is subject to the control and powers specifically granted by the court and authorized by statute. A receiver is required to perform numerous tasks in satisfying his duty of care: collecting, selling, distributing, and disposing of corporate assets. Inherent in the task of monitoring a corporate estate is the bringing and defending of pertinent lawsuits. Dickie v. Flamme Bros., 251 Neb. 910, 560 N.W.2d 762 (1997).

21-2098 Duties of officers.

Each officer shall have the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

Source: Laws 1995, LB 109, § 98.

21-2099 Standards of conduct for officers.

(1) An officer with discretionary authority shall discharge his or her duties under that authority:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he or she reasonably believes to be in the best interests of the corporation.

(2) In discharging his or her duties, an officer shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(b) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(3) An officer shall not be considered to be acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) An officer shall not be liable for any action taken as an officer, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

Source: Laws 1995, LB 109, § 99.

21-20,100 Resignation and removal of officers.

(1) An officer may resign at any time by delivering notice to the corporation. A resignation shall be effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor shall not take office until the effective date.

(2) A board of directors may remove any officer at any time with or without cause.

Source: Laws 1995, LB 109, § 100.

21-20,101 Contract rights of officers.

(1) The appointment of an officer shall not itself create any contract rights.

(2) An officer's removal shall not affect the officer's contract rights, if any, with the corporation. An officer's resignation shall not affect the corporation's contract rights, if any, with the officer.

Source: Laws 1995, LB 109, § 101.

21-20,102 Indemnification; terms, defined.

For purposes of sections 21-20,102 to 21-20,111:

(1) Corporation shall include any domestic or foreign predecessor entity of a corporation in a merger;

(2) Director or officer shall mean an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, partner, member of a limited liability company, trustee, employee, or agent of another domestic or foreign corporation, partnership, limited liability company, joint venture, trust, employee benefit plan, or other entity. A director or officer shall be considered to be serving an employee benefit plan at the corporation's request if his or her duties to the corporation also impose duties on or otherwise involve services by him or her to the plan or to participants in or beneficiaries of the plan. Director or officer shall include, unless the context requires otherwise, the estate or personal representative of a director or officer;

(3) Disinterested director shall mean a director who, at the time of a vote referred to in subsection (3) of section 21-20,105 or a vote or selection referred to in subsection (2) or (3) of section 21-20,107, is not (a) a party to the proceeding or (b) an individual having a familial, financial, professional, or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the decision being made;

(4) Expenses shall include attorney's fees;

(5) Liability shall mean the obligation to pay a judgment, settlement, penalty, or fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding;

(6) Official capacity shall mean (a) when used with respect to a director, the office of director in a corporation, and (b) when used with respect to an officer, as contemplated in section 21-20,108, the office in a corporation held by the officer. Official capacity shall not include service for any other domestic or foreign corporation or limited liability company or any partnership, joint venture, trust, employee benefit plan, or other entity;

(7) Party shall mean an individual who was, is, or is threatened to be made, a defendant or respondent in a proceeding; and

(8) Proceeding shall mean any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative and whether formal or informal.

Source: Laws 1995, LB 109, § 102.

21-20,103 Indemnification authority.

(1) Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because he or she is a director against liability incurred in the proceeding if:

(a)(i) He or she conducted himself or herself in good faith;

(ii) He or she reasonably believed:

(A) In the case of conduct in his or her official capacity, that his or her conduct was in the best interests of the corporation; and

(B) In all other cases that his or her conduct was at least not opposed to the best interests of the corporation; and

(iii) In the case of any criminal proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful; or

(b) He or she engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation as authorized by subdivision (2)(e) of section 21-2018.

(2) A director's conduct with respect to an employee benefit plan for a purpose he or she reasonably believed to be in the interests of the participants in and beneficiaries of the plan shall be conduct that satisfies the requirement of subdivision (1)(a)(ii)(B) of this section.

(3) The termination of a proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not be, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

(4) Unless ordered by a court under subdivision (1)(c) of section 21-20,106, a corporation may not indemnify a director under this section:

(a) In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (1) of this section; or

(b) In connection with any proceeding with respect to conduct for which he or she was adjudged liable on the basis that he or she received a financial benefit to which he or she was not entitled, whether or not involving action in his or her official capacity.

Source: Laws 1995, LB 109, § 103.

21-20,104 Mandatory indemnification.

A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he or she was a party because he or she was a director of the corporation against reasonable expenses incurred by him or her in connection with the proceeding.

Source: Laws 1995, LB 109, § 104.

The nonpayment of corporate taxes and the issuance of a certificate of dissolution by the Secretary of State effectively dissolves a corporation, which begins the running of the 2-year statute of limitations. Eiche v. Blankenau, 253 Neb. 255, 570 N.W.2d 190 (1997).

21-20,105 Indemnification; expenses.

(1) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding because he or she is a director if he or she delivers to the corporation:

(a) A written affirmation of his or her good faith belief that he or she has met the relevant standard of conduct described in section 21-20,103 or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by subdivision (2)(d) of section 21-2018; and

(b) His or her written undertaking to repay any funds advanced if he or she is not entitled to mandatory indemnification under section 21-20,104 and it is ultimately determined under section 21-20,106 or 21-20,107 that he or she has not met the relevant standard of conduct described in section 21-20,103.

(2) The undertaking required by subdivision (1)(b) of this section shall be an unlimited general obligation of the director but shall not be required to be secured and may be accepted without reference to the financial ability of the director to make repayment.

(3) Authorizations under this section shall be made:

(a) By the board of directors:

(i) If there are two or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote; or

(ii) If there are fewer than two disinterested directors, by the vote necessary for action by the board in accordance with subsection (3) of section 21-2093, in which authorization directors who do not qualify as disinterested directors may participate; or

(b) By the shareholders, but shares owned by or voted under the control of a director who at the time does not qualify as a disinterested director may not be voted on the authorization.

Source: Laws 1995, LB 109, § 105.

21-20,106 Court-ordered indemnification.

(1) A director who is a party to a proceeding because he or she is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall:

(a) Order indemnification if the court determines that the director is entitled to mandatory indemnification under section 21-20,104;

(b) Order indemnification or an advance for expenses if the court determines that the director is entitled to indemnification or an advance for expenses pursuant to a provision authorized by subsection (1) of section 21-20,110; or

(c) Order indemnification or an advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable:

(i) To indemnify the director; or

(ii) To advance expenses to the director, even if he or she has not met the relevant standard of conduct set forth in subsection (1) of section 21-20,103, failed to comply with section 21-20,105, or was adjudged liable in a proceeding referred to in subdivision (4)(a) or (b) of section 21-20,103, but if he or she was adjudged so liable his or her indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.

(2) If the court determines that the director is entitled to indemnification under subdivision (1)(a) of this section or to indemnification or an advance for expenses under subdivision (1)(b) of this section, it shall also order the corporation to pay the director's reasonable expenses incurred in connection with obtaining court-ordered indemnification or an advance for expenses. If the court determines that the director is entitled to indemnification or an advance for expenses under subdivision (1)(c) of this section, it may also order the corporation to pay the director's reasonable expenses to obtain court-ordered indemnification or an advance for expenses.

Source: Laws 1995, LB 109, § 106.

Cross References

Occupation tax, see Chapter 21, article 3.

21-20,107 Determination and authorization of indemnification.

(1) A corporation may not indemnify a director under section 21-20,103 unless authorized for a specific proceeding after a determination has been made that indemnification of the director is permissible because he or she has met the relevant standard of conduct set forth in section 21-20,103.

(2) The determination shall be made:

(a) If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote;

(b) By special legal counsel:

(i) Selected in the manner prescribed in subdivision (a) of this subsection; or

(ii) If there are fewer than two disinterested directors, selected by the board of directors in which selection directors who do not qualify as disinterested directors may participate; or

(c) By the shareholders, but shares owned by or voted under the control of a director who at the time does not qualify as a disinterested director may not be voted on the determination.

(3) Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two disinterested directors or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled under subdivision (2)(b)(ii) of this section to select special legal counsel.

Source: Laws 1995, LB 109, § 107.

21-20,108 Indemnification of officers.

(1) A corporation may indemnify and advance expenses under sections 21-20,102 to 21-20,111 to an officer of the corporation who is a party to a proceeding because he or she is an officer of the corporation:

(a) To the same extent as a director; and

(b) If he or she is an officer but not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract except for (i) liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding or (ii) liability arising out of conduct that constitutes (A) receipt by him or her of a financial benefit to which he or she is not entitled, (B) an intentional infliction of harm on the corporation or the shareholders, or (C) an intentional violation of criminal law.

(2) The provisions of subdivision (1)(b) of this section shall apply to an officer who is also a director if the basis on which he or she is made a party to the proceeding is an act or omission solely as an officer.

(3) An officer of a corporation who is not a director is entitled to mandatory indemnification under section 21-20,104, and may apply to a court under section 21-20,106 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or an advance for expenses under those provisions.

Source: Laws 1995, LB 109, § 108.

21-20,109 Indemnification; insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, member of a limited liability company, partner, trustee, employee, or agent of another domestic or foreign corporation, limited liability company, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director or officer whether or not the corporation would have power to indemnify or advance expenses to him or her against the same liability under sections 21-20,102 to 21-20,111.

Source: Laws 1995, LB 109, § 109.

21-20,110 Indemnification; variation by corporation.

(1) A corporation may, by a provision in its articles of incorporation or bylaws, or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 21-20,103 or advance funds to pay for or reimburse expenses in accordance with section 21-20,105. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in subsection (3) of section 21-20,105 and in subsection (3) of section 21-20,107. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section 21-20,105 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(2) Any provision pursuant to subsection (1) of this section shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by subdivision (1)(c) of section 21-20,133.

(3) A corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or an advance for expenses created by or pursuant to sections 21-20,102 to 21-20,111.

(4) Sections 21-20,102 to 21-20,111 shall not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with his or her appearance as a witness in a proceeding at a time when he or she is not a party.

(5) Sections 21-20,102 to 21-20,111 shall not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

Source: Laws 1995, LB 109, § 110.

21-20,111 Indemnification; restrictions.

A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by sections 21-20,102 to 21-20,111.

Source: Laws 1995, LB 109, § 111.

21-20,112 Director; conflict of interest; terms, defined.

For purposes of sections 21-20,112 to 21-20,115:

(1) Conflicting interest with respect to a corporation shall mean the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest if:

(a) Whether or not the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that he or she or a related person is a party to the transaction or has a beneficial financial interest in or is so closely linked to the transaction and of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if he or she were called upon to vote on the transaction; or

(b) The transaction is brought, or is of such character and significance to the corporation that it would in the normal course be brought, before the board of directors of the corporation for action and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or is so closely linked to the transaction and the transaction is of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if he or she were called upon to vote on the transaction:

(i) An entity, other than the corporation, of which the director is a director, general partner, member of a limited liability company, agent, or employee;

(ii) A person that controls one or more of the entities specified in subdivision (i) of this subdivision or an entity that is controlled by, or is under common control with, one or more of the entities specified in subdivision (i) of this subdivision; or

(iii) An individual who is a general partner, principal, or employer of the director;

(2) Director's conflicting interest transaction with respect to a corporation shall mean a transaction effected or proposed to be effected by the corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest respecting which a director of the corporation has a conflicting interest;

(3) Related person of a director shall mean (a) the spouse, or a parent or sibling thereof, of the director, or a child, grandchild, sibling, parent, or spouse of any thereof, of the director, or an individual having the same home as the director, or a trust or estate of which an individual specified in this subdivision is a substantial beneficiary or (b) a trust, estate, incompetent, conservatee, or minor of which the director is a fiduciary;

(4) Required disclosure shall mean disclosure by the director who has a conflicting interest of (a) the existence and nature of his or her conflicting interest and (b) all facts known to him or her respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction; and

(5) Time of commitment respecting a transaction shall mean the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation, or its subsidiary or the entity in which it has a controlling interest, becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage.

Source: Laws 1995, LB 109, § 112.

21-20,113 Director; conflict of interest; judicial action.

(1) A transaction effected or proposed to be effected by a corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, that is not a director's conflicting interest transaction, may not be enjoined or set aside or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation because a director of the corporation, or any person with whom or which he or she has a personal, economic, or other association, has an interest in the transaction.

(2) A director's conflicting interest transaction may not be enjoined or set aside or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation because the director, or any person with whom or which he or she has a personal, economic, or other association, has an interest in the transaction, if:

(a) Directors' action respecting the transaction was at any time taken in compliance with section 21-20,114;

(b) Shareholders' action respecting the transaction was at any time taken in compliance with section 21-20,115; or

(c) The transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation.

Source: Laws 1995, LB 109, § 113.

21-20,114 Director; conflict of interest; directors' action.

(1) Directors' action respecting a transaction shall be effective for purposes of subdivision (2)(a) of section 21-20,113 if the transaction received the affirmative vote of a majority, but no fewer than two, of those qualified directors on the board of directors or on a duly empowered committee of the board of directors who voted on the transaction after either required disclosure to them, to the extent the information was not known by them, or compliance with subsection (2) of this section. Such action by a committee shall be effective only if:

(a) All members of the committee are qualified directors; and

(b) Its members are either all the qualified directors on the board or are appointed by the affirmative vote of a majority of the qualified directors on the board.

(2) If a director has a conflicting interest respecting a transaction, but neither he or she nor a related person of the director specified in subdivision (3)(a) of section 21-20,112 is a party to the transaction, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting information relating to the transaction such that the director may not make the disclosure described in subdivision (4)(b) of section 21-20,112, then disclosure shall be sufficient for purposes of subsection (1) of this section if the director (a) discloses to the directors voting on the transaction the existence and nature of his or her conflicting interest and informs them of the character of and limitations imposed by that duty before their vote on the transaction and (b) plays no part, directly or indirectly, in the directors' deliberations or vote.

(3) A majority, but no fewer than two, of all the qualified directors on the board of directors or on the committee shall constitute a quorum for purposes of action that complies with this section. Directors' action that otherwise complies with this section shall not be affected by the presence or vote of a director who is not a qualified director.

(4) For purposes of this section, qualified director shall mean, with respect to a director's conflicting interest transaction, any director who does not have either (a) a conflicting interest respecting the transaction or (b) a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, under the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction.

Source: Laws 1995, LB 109, § 114.

21-20,115 Director; conflict of interest; shareholders' action.

(1) Shareholders' action respecting a transaction shall be effective for purposes of subdivision (2)(b) of section 21-20,113 if a two-thirds majority of the votes entitled to be cast by the holders of all qualified shares were cast in favor of the transaction after (a) notice to shareholders describing the director's conflicting interest transaction, (b) provision of the information referred to in subsection (4) of this section, and (c) required disclosure to the shareholders

who voted on the transaction to the extent the information was not known by them.

(2) For purposes of this section, qualified shares shall mean any shares entitled to vote with respect to the director's conflicting interest transaction except shares that, to the knowledge before the vote of the secretary or other officer or agent of the corporation authorized to tabulate votes, are beneficially owned or the voting of which is controlled by a director who has a conflicting interest respecting the transaction or a related person of the director, or both.

(3) A majority of the votes entitled to be cast by the holders of all qualified shares shall constitute a quorum for purposes of action that complies with this section. Subject to the provisions of subsections (4) and (5) of this section, shareholders' action that otherwise complies with this section shall not be affected by the presence of holders or the voting of shares that are not qualified shares.

(4) For purposes of compliance with subsection (1) of this section, a director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary, or other officer or agent of the corporation authorized to tabulate votes, of the number and the identity of persons holding or controlling the vote, and of all shares that the director knows are beneficially owned or the voting of which is controlled by the director or by a related person of the director, or both.

(5) If a shareholders' vote does not comply with subsection (1) of this section solely because of a failure of a director to comply with subsection (4) of this section, and if the director establishes that his or her failure did not determine and was not intended by him or her to influence the outcome of the vote, the court may, with or without further proceedings respecting subdivision (2)(c) of section 21-20,113, take such action respecting the transaction and the director and give such effect, if any, to the shareholders' vote as it considers appropriate in the circumstances.

Source: Laws 1995, LB 109, § 115.

(i) AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

21-20,116 Articles of incorporation; authority to amend.

(1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation shall be determined as of the effective date of the amendment.

(2) A shareholder of the corporation shall not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

Source: Laws 1995, LB 109, § 116.

21-20,117 Articles of incorporation; amendment by board of directors.

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

(1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;

(4) To change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding;

(5) To change the corporate name by substituting the word corporation, incorporated, company, or limited, or the abbreviation corp., inc., co., or ltd., for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name; or

(6) To make any other change expressly permitted by the Business Corporation Act to be made without shareholder action.

Source: Laws 1995, LB 109, § 117.

21-20,118 Articles of incorporation; amendment by board of directors and shareholders.

(1) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(2) For the amendment to be adopted:

(a) The board of directors shall recommend the amendment to the shareholders unless the board of directors determines that because of a conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and

(b) The shareholders entitled to vote on the amendment shall approve the amendment as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposed amendment on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 21-2055. The notice of the meeting shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(5) Unless the Business Corporation Act, the articles of incorporation, or the board of directors acting pursuant to subsection (3) of this section requires a greater vote or a vote by voting groups, the amendment to be adopted shall be approved by:

(a) A two-thirds majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and

(b) The votes required by sections 21-2063 and 21-2064 by every other voting group entitled to vote on the amendment.

Source: Laws 1995, LB 109, § 118.

21-20,119 Articles of incorporation; voting on amendments by voting groups.

(1) The holders of the outstanding shares of a class shall be entitled to vote as a separate voting group if shareholder voting is otherwise required by the Business Corporation Act on a proposed amendment if the amendment would:

(a) Increase or decrease the aggregate number of authorized shares of the class;

(b) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(c) Effect an exchange or reclassification or create the right of exchange of all or part of the shares of another class into shares of the class;

(d) Change the designation, rights, preferences, or limitations of all or part of the shares of the class;

(e) Change the shares of all or part of the class into a different number of shares of the same class;

(f) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(g) Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(h) Limit or deny an existing preemptive right of all or part of the shares of the class; or

(i) Cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

(2) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (1) of this section, the shares of that series shall be entitled to vote as a separate voting group on the proposed amendment.

(3) If a proposed amendment that entitles two or more series of shares to vote as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shares of all the series so affected shall vote together as a single voting group on the proposed amendment.

(4) A class or series of shares shall be entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

Source: Laws 1995, LB 109, § 119.

21-20,120 Articles of incorporation; amendment before issuance of shares.

If a corporation has not yet issued shares, its incorporators or board of directors may adopt one or more amendments to the corporation's articles of incorporation.

Source: Laws 1995, LB 109, § 120.

21-20,121 Articles of incorporation; articles of amendment.

A corporation amending its articles of incorporation shall deliver to the Secretary of State for filing articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment adopted;

(3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;

(4) The date of each amendment's adoption;

(5) If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required; and

(6) If an amendment was approved by the shareholders:

(a) The designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting; and

(b) Either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

Source: Laws 1995, LB 109, § 121.

21-20,122 Restated articles of incorporation.

(1) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action.

(2) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it shall be adopted as provided in section 21-20,118.

(3) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 21-2055. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.

(4) A corporation restating its articles of incorporation shall deliver to the Secretary of State for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(a) Whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or

(b) If the restatement contains an amendment to the articles requiring shareholder approval, the information required by section 21-20,121.

(5) Duly adopted restated articles of incorporation shall supersede the original articles of incorporation and all amendments thereto.

(6) The Secretary of State may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection (4) of this section.

Source: Laws 1995, LB 109, § 122.

21-20,123 Articles of incorporation; amendment pursuant to reorganization.

(1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by section 21-2018.

(2) The individual or individuals designated by the court shall deliver to the Secretary of State for filing articles of amendment setting forth:

(a) The name of the corporation;

(b) The text of each amendment approved by the court;

(c) The date of the court's order or decree approving the articles of amendment;

(d) The title of the reorganization proceeding in which the order or decree was entered; and

(e) A statement that the court had jurisdiction of the proceeding under federal statute.

(3) Shareholders of a corporation undergoing reorganization shall not have dissenters' rights except as and to the extent provided in the reorganization plan.

(4) This section shall not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Source: Laws 1995, LB 109, § 123.

21-20,124 Articles of incorporation; effect of amendment.

An amendment to articles of incorporation shall not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name shall not abate a proceeding brought by or against the corporation in its former name.

Source: Laws 1995, LB 109, § 124.

21-20,125 Bylaws; amendment by board of directors or shareholders.

(1) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(a) The articles of incorporation or the Business Corporation Act reserves this power exclusively to the shareholders in whole or part; or

(b) The shareholders in amending or repealing a particular bylaw provide expressly that the board of directors may not amend or repeal that bylaw.

(2) A corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors.

Source: Laws 1995, LB 109, § 125.

21-20,126 Bylaw increasing quorum or voting requirement for shareholders.

(1) If authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders or voting groups of shareholders than is required by the Business Corporation Act. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

(2) A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection (1) of this section may not be adopted, amended, or repealed by the board of directors.

Source: Laws 1995, LB 109, § 126.

21-20,127 Bylaw increasing quorum or voting requirement for board of directors.

(1) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

(a) If originally adopted by the shareholders, only by the shareholders; or

(b) If originally adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(3) Action by the board of directors under subdivision (1)(b) of this section to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

Source: Laws 1995, LB 109, § 127.

(j) MERGER AND SHARE EXCHANGE

21-20,128 Merger; plan.

(1) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders, if required by section 21-20,130, approve a plan of merger.

(2) The plan of merger shall set forth:

(a) The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or in part.

(3) The plan of merger may set forth:

(a) Amendments to the articles of incorporation of the surviving corporation; and

(b) Other provisions relating to the merger.

Source: Laws 1995, LB 109, § 128.

21-20,129 Share exchange; plan.

(1) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders, if required by section 21-20,130, approve the exchange.

(2) The plan of exchange shall set forth:

(a) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;

(b) The terms and conditions of the exchange; and

(c) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or in part.

(3) The plan of exchange may set forth other provisions relating to the exchange.

(4) This section shall not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

Source: Laws 1995, LB 109, § 129.

21-20,130 Merger or share exchange; action on plan.

(1) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger and the board of directors of the corporation whose shares will be acquired in the share exchange shall submit the plan of merger, except as provided in subsection (7) of this section, or share exchange for approval by its shareholders.

(2) For a plan of merger or share exchange to be approved:

(a) The board of directors shall recommend the plan of merger or share exchange to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(b) The shareholders entitled to vote shall approve the plan.

(3) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 21-2055. The notice shall also state that the purpose, or one of the purposes, of

the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

(5) Unless the Business Corporation Act, the articles of incorporation, or the board of directors acting pursuant to subsection (3) of this section requires a greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized shall be approved by each voting group entitled to vote separately on the plan by a two-thirds majority of all the votes entitled to be cast on the plan by that voting group.

(6) Separate voting by voting groups shall be required:

(a) On a plan of merger if the plan contains a provision that, if contained in a proposed amendment to the articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under section 21-20,119; and

(b) On a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(7) Action by the shareholders of the surviving corporation on a plan of merger shall not be required if:

(a) The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in section 21-20,117, from its articles before the merger;

(b) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;

(c) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than twenty percent the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

(d) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than twenty percent the total number of participating shares outstanding immediately before the merger.

(8) For purposes of subsection (7) of this section:

(a) Participating shares shall mean shares that entitle their holders to participate without limitation in distributions; and

(b) Voting shares shall mean shares that entitle their holders to vote unconditionally in elections of directors.

(9) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

Source: Laws 1995, LB 109, § 130.

21-20,131 Merger of subsidiary.

(1) A parent corporation owning at least ninety percent of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without the approval of the shareholders of the parent or subsidiary.

(2) The board of directors of the parent shall adopt a plan of merger that sets forth:

(a) The names of the parent and subsidiary; and

(b) The manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or in part.

(3) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(4) The parent may not deliver articles of merger to the Secretary of State for filing until at least thirty days after the date the parent mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

(5) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation, except for amendments enumerated in section 21-20,117.

Source: Laws 1995, LB 109, § 131.

21-20,132 Articles of merger or share exchange.

(1) After a plan of merger or share exchange is approved by the shareholders or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the Secretary of State for filing articles of merger or share exchange setting forth:

(a) The plan of merger or share exchange;

(b) If shareholder approval was not required, a statement to that effect; and

(c) If approval of the shareholders of one or more corporations party to the merger or share exchange was required:

(i) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and

(ii) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

(2) A merger or share exchange shall take effect upon the effective date of the articles of merger or share exchange.

Source: Laws 1995, LB 109, § 132.

21-20,133 Effect of merger or share exchange.

(1) When a merger takes effect:

(a) Every other corporation party to the merger shall merge into the surviving corporation and the separate existence of every corporation except the surviving corporation shall cease;

(b) The title to all real estate and other property owned by each corporation party to the merger shall be vested in the surviving corporation without reversion or impairment;

(c) The surviving corporation shall have all liabilities of each corporation party to the merger;

(d) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

(e) The articles of incorporation of the surviving corporation shall be amended to the extent provided in the plan of merger; and

(f) The shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property shall be converted and the former holders of the shares shall be entitled only to the rights provided in the articles of merger or to their rights under sections 21-20,137 to 21-20,150.

(2) When a share exchange takes effect the shares of each acquired corporation shall be exchanged as provided in the plan and the former holders of the shares shall be entitled only to the exchange rights provided in the articles of share exchange or to their rights under sections 21-20,137 to 21-20,150.

Source: Laws 1995, LB 109, § 133.

21-20,134 Merger or share exchange with foreign corporation.

(1) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(a) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(b) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(c) The foreign corporation complies with section 21-20,132 if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(d) Each domestic corporation complies with the applicable provisions of sections 21-20,128 to 21-20,131 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with section 21-20,132.

(2) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange shall be deemed:

(a) To agree that it may be served with process within or without this state in a proceeding in the courts of this state to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

(b) To agree that it will promptly pay to the dissenting shareholder of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under sections 21-20,137 to 21-20,150.

(3) This section shall not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

Source: Laws 1995, LB 109, § 134.

(k) SALE OF ASSETS

21-20,135 Sales of assets in regular course of business and mortgage of assets.

(1) A corporation may, on the terms and conditions and for the consideration determined by the board of directors:

(a) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business;

(b) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business; or

(c) Transfer any or all of its property to a corporation all the shares of which are owned by the corporation.

(2) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (1) of this section shall not be required.

Source: Laws 1995, LB 109, § 135.

21-20,135.01 Transfer of real estate.

A corporation may transfer any interest in real estate by instrument, with or without a corporate seal, signed by the president, a vice president, or the presiding officer of the board of directors of the corporation. Such instrument, when acknowledged by such officer to be an act of the corporation, shall be presumed to be valid and may be recorded in the proper office of the county in which the real estate is located, in the same manner as other such instruments.

Source: Laws 2001, LB 138, § 1.

21-20,136 Sales of assets other than in regular course of business.

(1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the goodwill, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(2) For a transaction to be authorized:

(a) The board of directors shall recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and

(b) The shareholders entitled to vote shall approve the transaction.

(3) The board of directors may condition its submission of the proposed transaction on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 21-2055. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) of this section requires a greater vote or a vote by voting groups, the transaction to be authorized shall be approved by a two-thirds majority of all the votes entitled to be cast on the transaction.

(6) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further shareholder action.

(7) A transaction that constitutes a distribution shall be governed by section 21-2050 and not by this section.

Source: Laws 1995, LB 109, § 136.

(l) DISSENTERS' RIGHTS

21-20,137 Dissenters' rights; terms, defined.

For purposes of sections 21-20,137 to 21-20,150:

(1) Beneficial shareholder shall mean the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder;

(2) Corporation shall mean the issuer of the shares held by a dissenter before the corporate action or the surviving or acquiring corporation by merger or share exchange of that issuer;

(3) Dissenter shall mean a shareholder who is entitled to dissent from corporate action under section 21-20,138 and who exercises that right when and in the manner required by sections 21-20,140 to 21-20,148;

(4) Fair value, with respect to a dissenter's shares, shall mean the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable;

(5) Interest shall mean interest from the effective date of the corporate action until the date of payment at the rate specified in section 45-104, as such rate may from time to time be adjusted by the Legislature;

(6) Record shareholder shall mean the person in whose name shares are registered in the records of a corporation or the beneficial shareholder to the extent of the rights granted by a nominee certificate on file with a corporation; and

(7) Shareholder shall mean the record shareholder or the beneficial shareholder.

Source: Laws 1995, LB 109, § 137.

21-20,138 Right to dissent.

(1) A shareholder shall be entitled to dissent from, and obtain payment of the fair value of his or her shares in the event of, any of the following corporate actions:

(a) Consummation of a plan of merger to which the corporation is a party:

(i) If shareholder approval is required for the merger by section 21-20,130 or the articles of incorporation and the shareholder is entitled to vote on the merger; or

(ii) If the corporation is a subsidiary that is merged with its parent under section 21-20,131;

(b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;

(c) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(d) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:

(i) Alters or abolishes a preferential right of the shares;

(ii) Creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase of the shares;

(iii) Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

(iv) Excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or

(v) Reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under section 21-2038; or

(e) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, the bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(2) A shareholder entitled to dissent and obtain payment for his or her shares under sections 21-20,137 to 21-20,150 may not challenge the corporate action creating his or her entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

(3) The right to dissent and obtain payment under sections 21-20,137 to 21-20,150 shall not apply to the shareholders of a bank, trust company, stock-owned savings and loan association, or the holding company of any such bank, trust company, or stock-owned savings and loan association.

Source: Laws 1995, LB 109, § 138; Laws 2003, LB 131, § 22.

Pursuant to subsection (3) of this section, minority shareholders of a bank or bank holding company have no statutory right to dissent and receive fair value for their shares. Bank shareholders possess an equitable right to receive fair value for their shares in the event that they are canceled by a cash-out merger, regardless of their exclusion from such rights under subsection (3) of this section. Stoneman v. United Neb. Bank, 254 Neb. 477, 577 N.W.2d 271 (1998).

21-20,139 Dissent by nominees and beneficial owners.

(1) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in his or her name only if he or she dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf he or she asserts dissenters' rights. The rights of a partial dissenter under this subsection shall be determined as if the shares as to which he or she dissents and his or her other shares were registered in the names of different shareholders.

(2) A beneficial shareholder may assert dissenters' rights as to shares held on his or her behalf only if:

(a) He or she submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(b) He or she does so with respect to all shares of which he or she is the beneficial shareholder or over which he or she has power to direct the vote.

Source: Laws 1995, LB 109, § 139.

21-20,140 Notice of dissenters' rights.

(1) If proposed corporate action creating dissenters' rights under section 21-20,138 is submitted to a vote at a shareholders' meeting, the meeting notice shall state that shareholders are or may be entitled to assert dissenters' rights under sections 21-20,137 to 21-20,150 and be accompanied by a copy of such sections.

(2) If corporate action creating dissenters' rights under section 21-20,138 is taken without a vote of shareholders, the corporation shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send those shareholders the dissenters' notice described in section 21-20,142.

Source: Laws 1995, LB 109, § 140.

21-20,141 Dissenters' rights; notice of intent to demand payment.

(1) If proposed corporate action creating dissenters' rights under section 21-20,138 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights (a) shall deliver to the corporation before the vote is taken written notice of his or her intent to demand payment for his or her shares if the proposed action is effectuated and (b) shall not vote his or her shares in favor of the proposed action.

(2) A shareholder who does not satisfy the requirements of subsection (1) of this section shall not be entitled to payment for his or her shares under sections 21-20,137 to 21-20,150.

Source: Laws 1995, LB 109, § 141.

21-20,142 Dissenters' notice.

(1) If proposed corporate action creating dissenters' rights under section 21-20,138 is authorized at a shareholders' meeting, the corporation shall

deliver a written dissenters' notice to all shareholders who satisfied the requirements of section 21-20,141.

(2) The dissenters' notice shall be sent no later than ten days after the corporate action was taken and shall:

(a) State where the payment demand shall be sent and where and when certificates for certificated shares shall be deposited;

(b) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(c) Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not he or she acquired beneficial ownership of the shares before that date;

(d) Set a date by which the corporation shall receive the payment demand which date may not be fewer than thirty nor more than sixty days after the date the notice required by subsection (1) of this section is delivered; and

(e) Be accompanied by a copy of sections 21-20,137 to 21-20,150.

Source: Laws 1995, LB 109, § 142.

21-20,143 Dissenters' rights; duty to demand payment.

(1) A shareholder who was sent a dissenters' notice described in section 21-20,142 shall demand payment, certify whether he or she acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to subdivision (2)(c) of section 21-20,142, and deposit his or her certificates in accordance with the terms of the notice.

(2) The shareholder who demands payment and deposits his or her shares under subsection (1) of this section shall retain all other rights of a shareholder until such rights are canceled or modified by the taking of the proposed corporate action.

(3) A shareholder who does not demand payment or does not deposit his or her share certificates where required, each by the date set in the dissenters' notice, shall not be entitled to payment for his or her shares under sections 21-20,137 to 21-20,150.

Source: Laws 1995, LB 109, § 143.

21-20,144 Dissenters' rights; share restrictions.

(1) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions are released under section 21-20,146.

(2) The person for whom dissenters' rights are asserted as to uncertificated shares shall retain all other rights of a shareholder until such rights are canceled or modified by the taking of the proposed corporate action.

Source: Laws 1995, LB 109, § 144.

21-20,145 Dissenters' rights; payment.

(1) Except as provided in section 21-20,147, as soon as the proposed corporate action is taken, or upon receipt of a payment demand, the corporation shall pay each dissenter who complied with section 21-20,143 the amount the

corporation estimates to be the fair value of his or her shares, plus accrued interest.

(2) The payment shall be accompanied by:

(a) The corporation's balance sheet as of the end of a fiscal year ending not more than sixteen months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

(b) A statement of the corporation's estimate of the fair value of the shares;

(c) An explanation of how the interest was calculated;

(d) A statement of the dissenter's right to demand payment under section 21-20,148; and

(e) A copy of sections 21-20,137 to 21-20,150.

Source: Laws 1995, LB 109, § 145.

21-20,146 Dissenters' rights; failure to take action.

(1) If the corporation does not take the proposed action within sixty days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

(2) If, after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it shall send a new dissenters' notice under section 21-20,142 and repeat the payment demand procedure.

Source: Laws 1995, LB 109, § 146.

21-20,147 Dissenters' rights; after-acquired shares.

(1) A corporation may elect to withhold payment required by section 21-20,145 from a dissenter unless he or she was the beneficial shareholder before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(2) To the extent the corporation elects to withhold payment under subsection (1) of this section after taking the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of his or her demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under section 21-20,148.

Source: Laws 1995, LB 109, § 147.

21-20,148 Dissenters' rights; procedure if shareholder dissatisfied with payment or offer.

(1) A dissenter may notify the corporation in writing of his or her own estimate of the fair value of his or her shares and amount of interest due, and demand payment of his or her estimate, less any payment under section 21-20,145, or reject the corporation's offer under section 21-20,147 and demand payment of the fair value of his or her shares and interest due if:

(a) The dissenter believes that the amount paid under section 21-20,145 or offered under section 21-20,147 is less than the fair value of his or her shares or that the interest due is incorrectly calculated;

(b) The corporation fails to make payment under section 21-20,145 within sixty days after the date set for demanding payment; or

(c) The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within sixty days after the date set for demanding payment.

(2) A dissenter waives his or her right to demand payment under this section unless he or she notifies the corporation of his or her demand in writing under subsection (1) of this section within thirty days after the corporation made or offered payment for his or her shares.

Source: Laws 1995, LB 109, § 148.

21-20,149 Dissenters' rights; court action.

(1) If a demand for payment under section 21-20,148 remains unsettled, the corporation shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The corporation shall commence the proceeding in the district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the district court of the county in this state where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located.

(3) The corporation shall make all dissenters, whether or not residents of this state, whose demands remain unsettled, parties to the proceeding as in an action against their shares and all parties shall be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) of this section shall be plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. Appraisers shall have the powers described in the order appointing them or in any amendment to such order. The dissenters shall be entitled to the same discovery rights as parties in other civil proceedings.

(5) Each dissenter made a party to the proceeding shall be entitled to judgment (a) for the amount, if any, by which the court finds the fair value of his or her shares, plus interest, exceeds the amount paid by the corporation or (b) for the fair value, plus accrued interest, of his or her after-acquired shares for which the corporation elected to withhold payment under section 21-20,147.

Source: Laws 1995, LB 109, § 149.

21-20,150 Dissenters' rights; court costs and attorney's fees.

(1) The court in an appraisal proceeding commenced under section 21-20,149 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under section 21-20,148.

(2) The court may also assess the attorney's fees and expenses and the fees and expenses of experts for the respective parties in amounts the court finds equitable:

(a) Against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of sections 21-20,140 to 21-20,148; or

(b) Against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by sections 21-20,137 to 21-20,150.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and that the fees for those services should not be assessed against the corporation, the court may award to counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited.

Source: Laws 1995, LB 109, § 150.

(m) DISSOLUTION

21-20,151 Voluntary dissolution; dissolution by incorporators or initial directors.

A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the Secretary of State for filing articles of dissolution that set forth:

(1) The name of the corporation;

(2) The date of its incorporation;

(3) Either (a) that none of the corporation's shares has been issued or (b) that the corporation has not commenced business;

(4) That no debt of the corporation remains unpaid;

(5) That the net assets of the corporation remaining after winding up have been distributed to the shareholders if shares were issued; and

(6) That a majority of the incorporators or initial directors authorized the dissolution.

Source: Laws 1995, LB 109, § 151.

21-20,152 Voluntary dissolution; dissolution by board of directors and shareholders.

(1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be adopted:

(a) The board of directors shall recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(b) The shareholders entitled to vote shall approve the proposal to dissolve as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposal to dissolve on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 21-2055. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) of this section requires a greater vote or a vote by voting groups, the proposal to dissolve to be adopted shall be approved by a two-thirds majority of all the votes entitled to be cast on that proposal.

Source: Laws 1995, LB 109, § 152.

21-20,153 Voluntary dissolution; articles of dissolution.

(1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State for filing articles of dissolution setting forth:

(a) The name of the corporation;

(b) The date dissolution was authorized;

(c) If dissolution was approved by the shareholders:

(i) The number of votes entitled to be cast on the proposal to dissolve; and

(ii) Either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval; and

(d) If voting by voting groups was required, the information required by subdivision (c) of this subsection shall be separately provided for each voting group entitled to vote separately on the proposal to dissolve.

(2) A corporation shall be dissolved upon the effective date of its articles of dissolution.

Source: Laws 1995, LB 109, § 153.

21-20,154 Voluntary dissolution; revocation of dissolution.

(1) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(2) Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Secretary of State for filing articles

of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) The name of the corporation;

(b) The effective date of the dissolution that was revoked;

(c) The date that the revocation of dissolution was authorized;

(d) If the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(e) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(f) If shareholder action was required to revoke the dissolution, the information required by subdivision (1)(c) or (d) of section 21-20,153.

(4) Revocation of dissolution shall be effective upon the effective date of the articles of revocation of dissolution.

(5) When the revocation of dissolution is effective, it shall relate back to and take effect as of the effective date of the dissolution and the corporation shall resume carrying on its business as if dissolution had never occurred.

Source: Laws 1995, LB 109, § 154.

21-20,155 Voluntary dissolution; effect.

(1) A dissolved corporation shall continue its corporate existence but may not carry on any business, except that appropriate to wind up and liquidate its business and affairs, including:

(a) Collecting its assets;

(b) Disposing of its properties that will not be distributed in kind to its shareholders;

(c) Discharging or making provision for discharging its liabilities;

(d) Distributing its remaining property among its shareholders according to their interests; and

(e) Doing every other act necessary to wind up and liquidate its business and affairs.

(2) Dissolution of a corporation shall not:

(a) Transfer title to the corporation's property;

(b) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(c) Subject its directors or officers to standards of conduct different from those prescribed in sections 21-2078 to 21-20,115;

(d) Change quorum or voting requirements for its board of directors or shareholders, change provisions for selection, resignation, or removal of its directors or officers or both, or change provisions for amending its bylaws;

(e) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(g) Terminate the authority of the registered agent of the corporation.

Source: Laws 1995, LB 109, § 155.

Cross References

Dissolved corporation, suit authorized, see section 25-312.01.

21-20,156 Voluntary dissolution; known claims against dissolved corporation.

(1) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(2) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice shall:

(a) Describe the information that shall be included in a claim;

(b) Provide a mailing address where a claim may be sent;

(c) State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation shall receive the claim; and

(d) State that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation shall be barred:

(a) If a claimant who was given written notice under subsection (2) of this section does not deliver the claim to the dissolved corporation by the deadline; or

(b) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

(4) For purposes of this section, claim shall not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Source: Laws 1995, LB 109, § 156.

21-20,157 Voluntary dissolution; unknown claims against dissolved corporation.

(1) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(2) The notice shall:

(a) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office, or, if none in this state, its registered office, is or was last located;

(b) Describe the information that shall be included in a claim and provide a mailing address where the claim may be sent; and

(c) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

(3) If the dissolved corporation publishes a newspaper notice in accordance with subsection (2) of this section, the claim of each of the following claimants shall be barred unless the claimant commences a proceeding to enforce the

claim against the dissolved corporation within five years after the publication date of the newspaper notice:

(a) A claimant who did not receive written notice under section 21-20,156;

(b) A claimant whose claim was timely sent to the dissolved corporation but not acted on; and

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim may be enforced under this section:

(a) Against the dissolved corporation to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of his or her pro rata share of the claim or the corporate assets distributed to him or her in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to him or her.

Source: Laws 1995, LB 109, § 157.

21-20,158 Administrative dissolution; grounds.

The Secretary of State may commence a proceeding under section 21-20,159 to administratively dissolve a corporation if:

(1) The corporation is without a registered agent or registered office in this state for sixty days or more;

(2) The corporation does not notify the Secretary of State within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(3) The corporation's period of duration stated in its articles of incorporation expires.

Source: Laws 1995, LB 109, § 158.

21-20,159 Administrative dissolution; procedure and effect.

(1) If the Secretary of State determines that one or more grounds exist under section 21-20,158 for dissolving a corporation, he or she shall serve the corporation with written notice of his or her determination under section 21-2034.

(2) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty days after service of the notice is perfected under section 21-2034, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under section 21-2034.

(3) A corporation administratively dissolved continues its corporate existence but may not carry on any business, except that business necessary to wind up and liquidate its business and affairs under section 21-20,155 and notify claimants under sections 21-20,156 and 21-20,157.

(4) The administrative dissolution of a corporation shall not terminate the authority of its registered agent.

Source: Laws 1995, LB 109, § 159.

Cross References

Dissolved corporation, suit authorized, see section 25-312.01.

21-20,160 Administrative dissolution; reinstatement.

(1) A corporation administratively dissolved under section 21-20,159 may apply to the Secretary of State for reinstatement. The application shall:

(a) Recite the name of the corporation and the effective date of its administrative dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(c) State that the corporation's name satisfies the requirements of section 21-2028.

(2) If the Secretary of State determines (a) that the application contains the information required by subsection (1) of this section and that the information is correct, and (b) that the corporation has paid to the Secretary of State all delinquent occupation taxes and has forwarded to the Secretary of State a properly executed and signed annual report for the current year, he or she shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-2034.

(3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its business as if the administrative dissolution had never occurred.

Source: Laws 1995, LB 109, § 160.

Cross References

Biennial report, see section 21-301.
Occupation tax, see Chapter 21, article 3.

21-20,161 Administrative dissolution; denial of reinstatement; appeal.

(1) If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution, he or she shall serve the corporation under section 21-2034 with a written notice that explains the reason or reasons for denial.

(2) The corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected. The corporation shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 1995, LB 109, § 161.

21-20,162 Judicial dissolution; grounds.

Except as provided in subdivision (2)(b) of this section, the court may dissolve a corporation:

(1) In a proceeding by the Attorney General if it is established that:

(a) The corporation obtained its articles of incorporation through fraud; or

(b) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2)(a) In a proceeding by a shareholder if it is established that:

(i) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock;

(ii) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(iv) The corporate assets are being misapplied or wasted.

(b) The right to bring a proceeding under this subdivision does not apply to shareholders of a bank, trust company, or stock-owned savings and loan association;

(3) In a proceeding by a creditor if it is established that:

(a) The creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied, and the corporation is insolvent; or

(b) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

Source: Laws 1995, LB 109, § 162; Laws 1999, LB 396, § 22; Laws 2003, LB 131, § 23.

The meaning of the term ''deadlocked'' within the context of this section is a corporation which, because of decision or indecision of the stockholders, cannot perform its corporate powers. Woodward v. Andersen, 261 Neb. 980, 627 N.W.2d 742 (2001).

This section clearly requires that the court's jurisdiction to dissolve the corporation is premised upon the petitioner's being a shareholder of the corporation. Baye v. Airlite Plastics Co., 260 Neb. 385, 618 N.W.2d 145 (2000).

21-20,163 Judicial dissolution; procedure.

(1) Venue for a proceeding by the Attorney General to dissolve a corporation shall lie in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located, or the district court of Lancaster County. Venue for a proceeding brought by any other party named in section 21-20,162 shall lie in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is or was last located.

(2) It shall not be necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and

duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(4) Within ten days of the commencement of a proceeding under subdivision (2) of section 21-20,162 to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national securities exchange, the corporation shall send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under section 21-20,166 and accompanied by a copy of such section.

Source: Laws 1995, LB 109, § 163.

21-20,164 Judicial dissolution; receivership or custodianship.

(1) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing after notifying all parties to the proceeding and any interested persons designated by the court before appointing a receiver or custodian. The court appointing a receiver or custodian shall have exclusive jurisdiction over the corporation and all of its property wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order which may be amended from time to time. Among other powers:

(a) The receiver (i) may dispose of all or any part of the assets of the corporation wherever located at a public or private sale if authorized by the court and (ii) may sue and defend in his or her own name as receiver of the corporation in all courts of this state; and

(b) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(4) The court during a receivership may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver if doing so is in the best interests of the corporation, its shareholders, and its creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his or her counsel from the assets of the corporation or proceeds from the sale of the assets.

Source: Laws 1995, LB 109, § 164.

21-20,165 Judicial dissolution; decree.

(1) If after a hearing the court determines that one or more grounds for judicial dissolution described in section 21-20,162 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution

and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State who shall file it.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with section 21-20,155 and the notification of claimants in accordance with sections 21-20,156 and 21-20,157.

Source: Laws 1995, LB 109, § 165.

21-20,166 Judicial dissolution; election to purchase.

(1) In a proceeding under subdivision (2) of section 21-20,162 to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) An election to purchase pursuant to this section may be filed with the court at any time within ninety days after the filing of the petition under subdivision (2) of section 21-20,162 or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within ten days thereafter, give written notice to all shareholders, other than the petitioner. The notice shall state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and shall advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate shall file notice of their intention to join in the purchase no later than thirty days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under subdivision (2) of section 21-20,162 may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his or her shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other disposition.

(3) If, within sixty days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of the petitioner's shares upon the terms and conditions agreed to by the parties.

(4) If the parties are unable to reach an agreement as provided for in subsection (3) of this section, the court, upon application of any party, shall stay such proceedings and determine the fair value of the petitioner's shares as of the day before the date on which the petition under subdivision (2) of section 21-20,162 was filed or as of such other date as the court deems appropriate under the circumstances.

(5)(a) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments when necessary in the interest of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate specified in section 45-104, as such rate may from time to time be adjusted by the Legislature, and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed.

(b) If the court finds that the petitioning shareholder had probable grounds for relief under subdivision (2)(a)(ii) or (iv) of section 21-20,162, it may award to the petitioning shareholder reasonable attorney's fees and expenses and fees and expenses of any experts employed by him or her.

(6) Upon entry of an order under subsection (3) or subdivision (5)(a) of this section, the court shall dismiss the petition to dissolve the corporation under section 21-20,162, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to him or her by the order of the court which shall be enforceable in the same manner as any other judgment.

(7) The purchase ordered pursuant to subdivision (5)(a) of this section shall be made within ten days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to sections 21-20,152 and 21-20,153, which articles shall then be adopted and filed within fifty days thereafter. Upon the filing of such articles of dissolution the corporation shall be dissolved in accordance with the provisions of sections 21-20,155 to 21-20,157 and the order entered pursuant to subsection (5) of this section shall no longer be of any force or effect except that the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of subdivision (5)(b) of this section and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

(8) Any payment by the corporation pursuant to an order under subsection (3) or (5) of this section, other than an award of fees and expenses pursuant to subsection (5) of this section, shall be subject to the provisions of section 21-2050.

Source: Laws 1995, LB 109, § 166; Laws 1999, LB 396, § 23.

A trial court's valuation of a closely held corporation is reasonable if it has an acceptable basis in fact and principle. Detter v. Miracle Hills Animal Hosp., 269 Neb. 164, 691 N.W.2d 107 (2005).

The existence of professional goodwill as a distributable asset in an action for the dissolution of a professional entity presents a question of fact. Detter v. Miracle Hills Animal Hosp., 269 Neb. 164, 691 N.W.2d 107 (2005).

21-20,167 Dissolution; deposit with State Treasurer.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not

competent to receive them shall be reduced to cash and deposited with the State Treasurer in accordance with the Uniform Disposition of Unclaimed Property Act. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the State Treasurer shall pay him or her, or his or her representative, that amount in accordance with the act.

Source: Laws 1995, LB 109, § 167.

Cross References

Dissolved corporation, suit authorized, see section 25-312.01.
Uniform Disposition of Unclaimed Property Act, see section 69-1329.

(n) FOREIGN CORPORATIONS

21-20,168 Foreign corporation; certificate of authority.

(1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(2) The following activities, among others, shall not constitute transacting business within the meaning of subsection (1) of this section:

(a) Maintaining, defending, or settling any proceeding;

(b) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

(c) Maintaining bank accounts;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

(e) Selling through independent contractors;

(f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) Owning, without more, real or personal property;

(j) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

(k) Transacting business in interstate commerce; or

(l) Acting as a foreign corporate trustee to the extent authorized under section 30-3820.

(3) The list of activities in subsection (2) of this section shall not be construed as exhaustive.

(4) The requirements of the Business Corporation Act shall not be applicable to foreign or alien insurers which are subject to the requirements of Chapter 44.

Source: Laws 1995, LB 109, § 168; Laws 2003, LB 130, § 113.

21-20,169 Foreign corporation; transacting business without certificate of authority; effect.

(1) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(3) A court in this state may stay a proceeding commenced by a foreign corporation, its successor, or its assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If the court determines that a certificate of authority is required, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(4) A foreign corporation shall be liable for a civil penalty of five hundred dollars for each day, but not to exceed a total of ten thousand dollars for each year, it transacts business in this state without a certificate of authority. The Attorney General may collect all penalties due under this subsection and shall remit them to the State Treasurer for credit to the permanent school fund.

(5) Notwithstanding subsections (1) and (2) of this section, the failure of a foreign corporation to obtain a certificate of authority shall not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

Source: Laws 1995, LB 109, § 169.

Cross References

Permanent school fund, see Article VII, section 5, Constitution of Nebraska.

21-20,170 Foreign corporation; certificate of authority; application.

(1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application shall set forth:

(a) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 21-20,173;

(b) The name of the state or country under whose law the foreign corporation is incorporated;

(c) The date of incorporation and period of duration;

(d) The street address of its principal office;

(e) The street address of its registered office in this state and the name of its registered agent at that office; and

(f) The names and street addresses of its current directors and officers.

(2) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the official having custody of corporate records in the state or country under whose law it is incorporated. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is filed in this state.

Source: Laws 1995, LB 109, § 170.

21-20,171 Foreign corporation; amended certificate of authority.

(1) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the Secretary of State if it changes:

(a) Its corporate name;

(b) The period of its duration; or

(c) The state or country of its incorporation.

(2) The requirements of section 21-20,170 for obtaining an original certificate of authority shall apply to obtaining an amended certificate under this section.

Source: Laws 1995, LB 109, § 171.

21-20,172 Foreign corporation; certificate of authority; effect.

(1) A certificate of authority shall authorize the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in the Business Corporation Act.

(2) A foreign corporation with a valid certificate of authority shall have the same but no greater rights and shall have the same but no greater privileges as, and except as otherwise provided by the act, shall be subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(3) The act shall not be construed to authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

Source: Laws 1995, LB 109, § 172.

Cross References

Foreign corporation, authority in state, see Chapter XII, article 1, Constitution of Nebraska.

21-20,173 Corporate name of foreign corporation.

(1) If the corporate name of a foreign corporation does not satisfy the requirements of section 21-2028, the foreign corporation, in order to obtain or maintain a certificate of authority to transact business in this state, may:

(a) Add the word corporation, incorporated, company, or limited, or the abbreviation corp., inc., co., or ltd., to its corporate name for use in this state; or

(b) Use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4) of this section, the corporate name, including a fictitious name, of a foreign corporation shall not be the same as or deceptively similar to, upon the records of the Secretary of State, any of the names referenced in subdivisions (2)(a) through (f) of this section:

(a) The corporate name of a corporation incorporated or authorized to transact business in this state;

(b) A corporate name reserved or registered under section 21-2029 or 21-2030;

(c) The fictitious name of another foreign corporation authorized to transact business in this state;

(d) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) A trade name registered in this state pursuant to sections 87-208 to 87-220; and

(f) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(3) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation or business entity, incorporated or authorized to transact business in this state, that is the same as or deceptively similar to, upon his or her records, the name applied for. The Secretary of State shall authorize use of the name applied for if:

(a) The other corporation or business entity consents to the use in writing; or

(b) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to transact business in this state and the foreign corporation:

(a) Has merged with the other corporation or business entity;

(b) Has been formed by reorganization of the other corporation or business entity; or

(c) Has acquired all or substantially all of the assets, including the name, of the other corporation or business entity.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 21-2028, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 21-2028 and obtains an amended certificate of authority under section 21-20,171.

Source: Laws 1995, LB 109, § 173; Laws 1997, LB 44, § 6; Laws 1997, LB 453, § 4; Laws 2003, LB 464, § 6.

21-20,174 Foreign corporation; registered office and registered agent.

Each foreign corporation authorized to transact business in this state shall continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(a) An individual who resides in this state and whose business office is identical with the registered office;

(b) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(c) A foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

Source: Laws 1995, LB 109, § 174.

21-20,175 Foreign corporation; change of registered office or registered agent.

(1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(a) Its name;

(b) The street address of its current registered office;

(c) If the current registered office is to be changed, the street address of its new registered office;

(d) The name of its current registered agent;

(e) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(f) After any change or changes are made, that the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of his or her business office, he or she may change the street address of the registered office of any foreign corporation for which he or she is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

Source: Laws 1995, LB 109, § 175.

21-20,176 Foreign corporation; resignation of registered agent.

(1) The registered agent of a foreign corporation may resign his or her agency appointment by signing and delivering to the Secretary of State for filing the original and two exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(2) After filing the statement the Secretary of State shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if not discontinued. The Secretary of State shall mail the other copy to the foreign corporation at its principal office address shown in its most recent annual report.

(3) The agency appointment shall be terminated and the registered office discontinued if so provided on the thirty-first day after the date on which the statement was filed.

Source: Laws 1995, LB 109, § 176.

21-20,177 Foreign corporation; service.

(1) The registered agent of a foreign corporation authorized to transact business in this state shall be the corporation's agent for service of process,

notice, or demand required or permitted by law to be served on the foreign corporation.

(2) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation has:

(a) No registered agent or its registered agent cannot with reasonable diligence be served;

(b) Withdrawn from transacting business in this state under section 21-20,178; or

(c) Had its certificate of authority revoked under section 21-20,180.

(3) Service shall be perfected under subsection (2) of this section at the earliest of:

(a) The date the foreign corporation receives the mail;

(b) The date shown on the return receipt if signed on behalf of the foreign corporation; or

(c) Five days after its deposit in the United States mail as evidenced by the postmark if mailed postage prepaid and correctly addressed.

(4) This section shall not be construed to prescribe the only means or necessarily the required means of serving a foreign corporation.

Source: Laws 1995, LB 109, § 177.

21-20,178 Foreign corporation; withdrawal.

(1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application shall set forth:

(a) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) That it revokes the authority of its registered agent to accept service on its behalf and consents that service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state may thereafter be made on such corporation outside this state; and

(d) A mailing address at which process against the corporation may be served.

Source: Laws 1995, LB 109, § 178.

21-20,179 Foreign corporation; revocation of certificate of authority; grounds.

The Secretary of State may commence a proceeding under section 21-20,180 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation is without a registered agent or registered office in this state for sixty days or more;

(2) The foreign corporation does not inform the Secretary of State under section 21-20,175 or 21-20,176 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;

(3) An incorporator, director, officer, or agent of the foreign corporation signed a document he or she knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing; or

(4) The Secretary of State receives a duly authenticated certificate from the official having custody of the corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or has disappeared as the result of a merger.

Source: Laws 1995, LB 109, § 179.

21-20,180 Foreign corporation; revocation of certificate of authority; procedure and effect.

(1) If the Secretary of State determines that one or more grounds exist under section 21-20,179 for revocation of a certificate of authority, he or she shall serve the foreign corporation with written notice of his or her determination under section 21-20,177.

(2) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty days after service of the notice is perfected under section 21-20,177, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under section 21-20,177.

(3) The authority of a foreign corporation to transact business in this state shall cease on the date shown on the certificate revoking its certificate of authority.

(4) Revocation of a foreign corporation's certificate of authority shall not terminate the authority of the registered agent of the corporation.

Source: Laws 1995, LB 109, § 180.

21-20,180.01 Foreign corporation; revocation of certificate of authority; reinstatement; procedure; effect.

(1) A foreign corporation, the certificate of authority of which has been revoked under section 21-20,180, may apply to the Secretary of State for reinstatement. The application shall:

(a) Recite the name of the foreign corporation and the effective date of the revocation;

(b) State that the ground or grounds for revocation either did not exist or have been eliminated; and

(c) State that the foreign corporation's name satisfies the requirements of section 21-20,173.

(2) If the Secretary of State determines (a) that the application contains the information required by subsection (1) of this section and that the information is correct and (b) that the foreign corporation has paid to the Secretary of State all delinquent occupation taxes and has forwarded to the Secretary of State a properly executed and signed annual report for the current year, he or she shall cancel the certificate of revocation, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-20,177.

(3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the revocation and the foreign corporation shall resume carrying on its business as if the revocation had never occurred.

Source: Laws 1996, LB 1036, § 6.

Cross References

Biennial report, see section 21-304.
Occupation tax, see Chapter 21, article 3.

21-20,181 Foreign corporation; revocation of certificate of authority; reinstatement denied; appeal.

(1) If the Secretary of State denies a foreign corporation's application for reinstatement following revocation of its certificate of authority under section 21-20,180, he or she shall serve the foreign corporation under section 21-20,177 with a written notice that explains the reason or reasons for denial.

(2) The foreign corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected under section 21-20,177. The foreign corporation shall appeal by petitioning the court to set aside the revocation and attaching to the petition copies of the Secretary of State's certificate of revocation, the foreign corporation's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 1995, LB 109, § 181; Laws 1996, LB 1036, § 7.

21-20,181.01 Foreign corporation; domestication; procedure.

In lieu of compliance with section 21-20,168, relating to the authorization of foreign corporations to transact business in this state, any corporation organized under the laws of any other state or states which has heretofore filed, or which may hereafter file, with the Secretary of State of this state a copy, certified by the Secretary of State or other proper officer of the state or country under the laws of which such foreign corporation is formed, of its charter or articles of association or incorporation, together with all amendments to such date, the street address of its registered office in this state and the name of its registered agent at that office, on filing with the Secretary of State a certified copy of a resolution adopted by its board of directors, including the date the resolution was adopted, accepting and agreeing to be bound by the provisions of the Business Corporation Act with respect to its property and business

operations within this state shall become and be a body corporate of this state. If the stock is no par, a resolution of the corporation, signed by an officer of the corporation, shall state the book value of the no par stock, which in no event shall be less than one dollar per share.

Source: Laws 1996, LB 1036, § 8.

21-20,181.02 Foreign corporation; cessation of domestication.

Any foreign corporation which has so domesticated pursuant to section 21-20,181.01 may cease to be a domesticated corporation by filing with the Secretary of State a certified copy of a resolution adopted by its board of directors renouncing its domestication and withdrawing its acceptance and agreement provided for in section 21-20,181.01.

Source: Laws 1996, LB 1036, § 9.

21-20,181.03 Foreign corporation; surrender of foreign charter; effect.

If a foreign corporation which has domesticated pursuant to section 21-20,181.01 surrenders its foreign corporate charter, and files, records, and publishes notice of amended articles of incorporation in the manner, time, and places required by sections 21-2017, 21-2018, and 21-20,189, such foreign corporation shall thereupon become and be a domestic corporation organized under the Business Corporation Act.

Source: Laws 1996, LB 1036, § 10.

(o) RECORDS AND REPORTS

21-20,182 Corporate records.

(1) A corporation shall keep as permanent records the minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its shareholders in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and class of shares held by each shareholder.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office:

(a) Its articles or restated articles of incorporation and all amendments thereto currently in effect;

(b) Its bylaws or restated bylaws and all amendments thereto currently in effect;

(c) Resolutions adopted by its board of directors creating one or more classes or series of shares and fixing their relative rights, preferences, and limitations if shares issued pursuant to those resolutions are outstanding;

(d) The minutes of all shareholders' meetings and records of all action taken by shareholders without a meeting for the past three years;

(e) All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under section 21-20,186;

(f) A list of the names and business addresses of its current directors and officers; and

(g) Its most recent biennial report delivered to the Secretary of State under section 21-301.

Source: Laws 1995, LB 109, § 182; Laws 2003, LB 524, § 16.

21-20,183 Inspection of corporate records by shareholders.

(1) A shareholder of a corporation shall be entitled to inspect and copy during regular business hours at the corporation's principal office any of the records of the corporation described in subsection (5) of section 21-20,182 if he or she gives the corporation written notice of his or her demand at least five business days before the date on which he or she wishes to inspect and copy.

(2) A shareholder of a corporation shall be entitled to inspect and copy during regular business hours at a reasonable location specified by the corporation any of the following records of the corporation if the shareholder meets the requirements of subsection (3) of this section and gives the corporation written notice of his or her demand at least five business days before the date on which he or she wishes to inspect and copy:

(a) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (1) of this section;

(b) Accounting records of the corporation; and

(c) The record of shareholders.

(3) A shareholder may inspect and copy the records described in subsection (2) of this section only if:

(a) The shareholder's demand is made in good faith and for a proper purpose;

(b) The shareholder describes with reasonable particularity his or her purpose and the records he or she desires to inspect; and

(c) The records are directly connected with the shareholder's purpose.

(4) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(5) This section shall not affect:

(a) The right of a shareholder to inspect records under section 21-2058 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(b) The power of a court, independently of the Business Corporation Act, to compel the production of corporate records for examination.

(6) For purposes of this section, shareholder shall include a beneficial owner whose shares are held in a voting trust or by a nominee on his or her behalf.

Source: Laws 1995, LB 109, § 183.

21-20,184 Inspection of corporate records; rights.

(1) A shareholder's agent or attorney shall have the same inspection and copying rights as the shareholder he or she represents.

(2) The right to copy records under section 21-20,183 shall include, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production or reproduction of the records.

(4) The corporation may comply with a shareholder's demand to inspect the record of shareholders under subdivision (2)(c) of section 21-20,183 by providing him or her with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

Source: Laws 1995, LB 109, § 184.

21-20,185 Corporate records; court-ordered inspection.

(1) If a corporation does not allow a shareholder who complies with subsection (1) of section 21-20,183 to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located, may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with subsections (2) and (3) of section 21-20,183 may apply to the district court in the county where the corporation's principal office, or, if none in this state, its registered office, is located, for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable attorney's fees, incurred to obtain the order, unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

Source: Laws 1995, LB 109, § 185.

21-20,186 Financial statements for shareholders.

(1) A corporation shall furnish its shareholders annual financial statements which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the

end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for that year unless such information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis.

(2) If the annual financial statements are reported upon by a public accountant, the accountant's report shall accompany the financial statements. If not, the financial statements shall be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(a) Stating his or her reasonable belief whether the financial statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(b) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(3) A corporation shall mail the annual financial statements to each shareholder within one hundred twenty days after the close of each fiscal year. Thereafter, on written request from a shareholder who was not mailed the statements, the corporation shall mail him or her the latest financial statements.

Source: Laws 1995, LB 109, § 186.

21-20,187 Other reports to shareholders.

(1) If a corporation indemnifies or advances expenses to a director under section 21-20,103, 21-20,104, 21-20,105, or 21-20,106 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

(2) If a corporation issues or authorizes the issuance of shares for promissory notes or for promises to render services in the future, the corporation shall report in writing to the shareholders the number of shares authorized or issued and the consideration received by the corporation, with or before the notice of the next shareholders' meeting.

Source: Laws 1995, LB 109, § 187.

21-20,188 Biennial report to Secretary of State.

Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the Secretary of State for filing a biennial report as required under section 21-301 or 21-304.

Source: Laws 1995, LB 109, § 188; Laws 2003, LB 524, § 17.

(p) PUBLICATION

21-20,189 Publication and notice requirements.

(1) Notice of incorporation, amendment, merger, or share exchange of a domestic corporation subject to the Business Corporation Act shall be published for three successive weeks in some legal newspaper of general circulation in the county where the corporation's principal office, or, if none in this state, its registered office, is located.

A notice of incorporation shall show (a) the corporate name for the corporation, (b) the number of shares the corporation is authorized to issue, (c) the street address of the corporation's initial registered office and the name of its initial registered agent at that office, and (d) the name and street address of each incorporator.

A brief resume of any amendment, merger, or share exchange of the corporation shall be published in the same manner and for the same period of time as a notice of incorporation is required to be published.

(2) Notice of the dissolution of a domestic corporation and the terms and conditions of such dissolution and the names of the persons who are to wind up and liquidate its business and affairs and their official titles, with a statement of assets and liabilities of the corporation, shall be published for three successive weeks in some legal newspaper of general circulation in the county where the corporation's principal office, or, if none in this state, its registered office, is located.

(3) Proof of publication of any of the notices required to be published under this section shall be filed in the office of the Secretary of State. In the event any notice required to be given pursuant to this section is not given, but is subsequently published for the required time, and proof of the publication thereof is filed in the office of the Secretary of State, the acts of such corporation prior to, as well as after, such publication shall be valid.

Source: Laws 1995, LB 109, § 189.

(q) TRANSITION PROVISIONS

21-20,190 Act; applicability to existing domestic corporations.

The Business Corporation Act shall apply to all domestic corporations in existence on January 1, 1996, that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

Source: Laws 1995, LB 109, § 190.

21-20,191 Act; applicability to qualified foreign corporations.

A foreign corporation authorized to transact business in this state on January 1, 1996, shall be subject to the Business Corporation Act but shall not be required to obtain a new certificate of authority to transact business under the act.

Source: Laws 1995, LB 109, § 191.

21-20,192 Repeal of statutes; reduction in penalty; effect.

(1) Except as provided in subsection (2) of this section, the repeal of a statute by Laws 1995, LB 109, shall not affect:

(a) The operation of the statute or any action taken under it before its repeal;

(b) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(c) Any violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation before its repeal; or

(d) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

(2) If a penalty or punishment imposed for violation of a statute repealed by Laws 1995, LB 109, is reduced by a similar provision of the Business Corporation Act, the penalty or punishment, if not already imposed, shall be imposed in accordance with the act.

Source: Laws 1995, LB 109, § 192.

21-20,193 Foreign corporation; domesticated under prior law; status.

Any corporation organized under the laws of any other state or territory which had become, in accordance with section 21-20,122, as such section existed prior to January 1, 1996, a body corporate of this state, shall retain such status for all purposes notwithstanding the repeal of such section.

Source: Laws 1996, LB 1036, § 11.

ARTICLE 21

NEBRASKA BUSINESS DEVELOPMENT CORPORATION ACT

Section

21-2101 Act, how cited.

Sections 21-2101 to 21-2117 shall be known and may be cited as the Nebraska Business Development Corporation Act.

Source: Laws 1967, c. 100, § 1, p. 302.

21-2102 Terms, defined.

For purposes of the Nebraska Business Development Corporation Act, unless the context otherwise requires:

(1) Development corporation or corporation shall mean any corporation organized pursuant to the act for the purpose of developing business, industry, and enterprise in the State of Nebraska by the lending of money thereto and otherwise organizing for the purposes set forth in section 21-2104;

(2) Financial institution shall mean any banking institution, insurance company or related corporation, savings and loan association, partnership, limited

liability company, credit union, foundation, trust, licensee under the Small Business Investment Act of 1958, 15 U.S.C. 661 et seq., as the act existed on September 1, 2001, or other entity engaged in lending or investing funds and authorized to do business in the State of Nebraska, including the United States Small Business Administration;

(3) Member shall mean any financial institution which undertakes to lend money to a development corporation upon its call and in accordance with section 21-2109;

(4) Board of directors shall mean members of the board of directors of a development corporation in office from time to time; and

(5) Loan limit shall mean, for any member, the maximum account permitted to be outstanding at any one time on loans made by any such member to a development corporation, as determined under the Nebraska Business Development Corporation Act.

Source: Laws 1967, c. 100, § 2, p. 302; Laws 1990, LB 1241, § 4; Laws 1993, LB 121, § 156; Laws 2001, LB 300, § 5.

21-2103 Business development corporations; incorporation.

One or more business development corporations may be incorporated in this state pursuant to the provisions of the Business Corporation Act not in conflict with or inconsistent with the provisions of the Nebraska Business Development Corporation Act.

Source: Laws 1967, c. 100, § 3, p. 303; Laws 1995, LB 109, § 204.

Cross References

Business Corporation Act, see section 21-2001.

21-2104 Business development corporation; purposes.

The purposes of a business development corporation shall be only: (1) To promote, stimulate, develop, and advance the business prosperity and economic welfare of the State of Nebraska and its citizens; (2) to encourage and assist through loans, investments, or other business transactions the location of new business and industry in the state; (3) to rehabilitate and assist existing business and industry in this state; (4) to stimulate and assist in the expansion of any kind of business activity which would tend to promote business development and maintain the economic stability in this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this state; (5) to cooperate and act in conjunction with other organizations, public or private, including the United States Small Business Administration, in the promotion and advancement of industrial, commercial, agricultural, and recreational development in this state; and (6) to provide financing for the promotion, development, and conduct of all kinds of business activity in this state.

Source: Laws 1967, c. 100, § 4, p. 303; Laws 1973, LB 56, § 1; Laws 1990, LB 1241, § 5; Laws 2001, LB 300, § 6.

21-2105 Powers.

(1) A development corporation shall have all the powers granted to corporations organized under the Business Corporation Act except that it shall not give

security for any loan made to it by members unless all loans to it by members are secured ratably in proportion to unpaid balances due.

(2) The restriction in subsection (1) of this section shall in no manner be construed so as to prohibit a development corporation from making unsecured borrowings from the Small Business Administration, an agency of the United States Government.

Source: Laws 1967, c. 100, § 5, p. 304; Laws 1995, LB 109, § 205.

Cross References

Business Corporation Act, see section 21-2001.

21-2106 Name.

Every corporation created under the provisions of sections 21-2101 to 21-2117 shall have as a part of its corporate name or title the words business development.

Source: Laws 1967, c. 100, § 6, p. 304.

21-2107 Offices; location.

A development corporation may maintain an office or offices in such place or places within the State of Nebraska as may be fixed by the board of directors.

Source: Laws 1967, c. 100, § 7, p. 304.

21-2108 Shares; acquire, sell, assign, or mortgage.

Notwithstanding any other provisions of law, any person, partnership, limited liability company, or corporation may acquire, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the shares of capital stock of a development corporation created under the Nebraska Business Development Corporation Act, except that insurance companies, reciprocal exchanges, and fraternal benefit societies shall not invest therein other than as provided in the Insurers Investment Act.

Source: Laws 1967, c. 100, § 8, p. 304; Laws 1991, LB 237, § 56; Laws 1993, LB 121, § 157.

Cross References

Insurers Investment Act, see section 44-5101.

21-2109 Membership; investment.

(1) Notwithstanding any other provision of law, any financial institution is authorized to become a member of and to invest in a development corporation by making application to the board of directors on such form and in such manner as the board of directors may require, and membership shall become effective upon acceptance of such application by such board. Membership shall be for the duration of the corporation, except that upon written notice given to the corporation two years in advance, a member may withdraw from membership at the expiration date of such notice and shall not, after the expiration date of such notice, be obligated to make any loans to the corporation. No financial institution shall become a member of more than one development corporation.

(2) Each such member shall make loans to the corporation as and when called upon to do so, upon such terms and conditions as approved from time to time by the board of directors, subject to the following conditions:

(a) All loans shall be evidenced by negotiable instruments of the corporation and shall bear interest at the rate determined by the board of directors to be the prime rate on unsecured commercial loans as of the date of the loan;

(b) All loan limits shall be established at the thousand dollar amount nearest the amount computed in accordance with this section;

(c) The total amount outstanding at any one time on loans to a development corporation made by any member, other than an insurance company, reciprocal exchange, or fraternal benefit society, shall not exceed the following limit, to be determined as of the time such member becomes a member, on the basis of figures contained in the most recent year-end statement prior to its application for membership:

(i) Banking associations, three percent of the paid-in capital and surplus;

(ii) Savings and loan associations, three percent of the general reserve account and surplus; and

(iii) Other financial institutions, such limits as may be approved from time to time by the board of directors of the development corporation;

(d) In the case of an insurance company, reciprocal exchange, and fraternal benefit society, the total amount outstanding at any time on loans to a development corporation shall be limited as follows: (i) For stock life insurance companies, one percent of capital and unassigned surplus, which amount loaned shall be included in and be a part of those investments authorized for stock life insurance companies under section 44-5153; (ii) for mutual life insurance companies or fraternal benefit societies, one percent of unassigned surplus, which amount loaned shall be included in and be a part of those investments authorized under such section; and (iii) for other insurance companies or reciprocal exchanges, one-tenth of one percent of admitted assets, which amount loaned shall be included in and be a part of those investments authorized under such section; and

(e) Each call for loans made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the loan limit of each member bears to the aggregate loan limits of all members.

Source: Laws 1967, c. 100, § 9, p. 305; Laws 1990, LB 1241, § 6; Laws 1991, LB 237, § 57; Laws 2001, LB 300, § 7.

21-2110 Shares; par value; authorized capital.

(1) Each share of stock of the corporation shall have a par value of not less than ten dollars per share, as fixed by its articles of incorporation, and shall be issued only for lawful money of the United States. At least two hundred thousand dollars shall be paid into the treasury for capital stock before a corporation shall be authorized to transact any business other than such business as relates to its organization.

(2) Each shareholder shall be entitled to one vote, in person or by proxy, for each share of capital stock held, and each member shall be entitled to one vote, in person or by proxy, as such member.

(3) The rights given by the Business Corporation Act to shareholders to attend meetings and to receive notice thereof and to exercise voting rights shall apply to members as well as to shareholders of a corporation created under the Nebraska Business Development Corporation Act. The voting rights of the members shall be the same as if they were a separate class of shareholders, and

shareholders and members shall in all cases vote separately by classes. A quorum at a shareholders' meeting shall require the presence in person or by proxy of a majority of the holders of the voting rights of each class.

Source: Laws 1967, c. 100, § 10, p. 306; Laws 1995, LB 109, § 206.

Cross References

Business Corporation Act, see section 21-2001.

21-2111 Board of directors; election; vacancy.

The business and affairs of the corporation shall be conducted by a board of directors. The number of directors shall at all times be a multiple of three. Two-thirds of the directors shall be elected by the members and one-third shall be elected by the shareholders. Any vacancy in the office of a director elected by members shall be filled by the directors elected by the members, and any vacancy in the office of a director elected by the shareholders shall be filled by the directors elected by the shareholders.

Source: Laws 1967, c. 100, § 11, p. 307.

Cross References

Cumulative voting for directors, see Chapter XII, article 1, Constitution of Nebraska.

21-2112 Articles of incorporation; amendment.

No amendment to the articles of incorporation shall be made which increases the obligation of a member to make loans to the corporation or which makes any change in a principal amount, interest rate, maturity date, or in the security or credit position of any outstanding loan made by a member to the corporation or which affects the right of a member to withdraw from membership or the voting rights of such member without the consent of eighty percent of the members who would be affected by such amendment; *Provided,* that this section shall not be construed to authorize amendments of the articles of incorporation so as to give greater rights or powers to the corporation or lesser rights or powers to the members than are set forth in sections 21-2101 to 21-2117.

Source: Laws 1967, c. 100, § 12, p. 307.

21-2113 Reserves; amount.

Each year the corporation shall set apart, as a reserve against losses and contingencies, not less than ten percent of its net earnings for the preceding fiscal year until such reserve shall be equal in value to one-half of the amount paid in on the capital stock then outstanding. Whenever the amount of such reserve so evidenced shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation.

Source: Laws 1967, c. 100, § 13, p. 307.

21-2114 Funds; deposit.

No corporation organized under the provisions of sections 21-2101 to 21-2117 shall at any time be authorized to receive money on deposit. The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors,

exclusive of any director who is an officer or director of the depository so designated.

Source: Laws 1967, c. 100, § 14, p. 308.

21-2115 Books and records.

A corporation shall keep, in addition to the books and records required by the Business Corporation Act, a record showing the names and addresses of all members of the corporation and the current status of loans made by each to the corporation. Members shall have the same rights with respect to all books and records as are given to shareholders in the Business Corporation Act.

Source: Laws 1967, c. 100, § 15, p. 308; Laws 1995, LB 109, § 207.

Cross References

Business Corporation Act, see section 21-2001.

21-2116 Shares; exempt from registration.

The shares of capital stock of the corporation and the documents representing the indebtedness of the corporation to its members, and any offering of the above, shall be exempt from registration under the Securities Act of Nebraska. A corporation making any such offering, and the officers and employees thereof, shall also be exempt from registration and qualification as dealers and salesmen under the Securities Act of Nebraska.

Source: Laws 1967, c. 100, § 16, p. 308.

Cross References

Securities Act of Nebraska, see section 8-1123.

21-2117 Credit of state not pledged.

Under no circumstances is the credit of the State of Nebraska, or any political subdivision thereof, pledged by the provisions of sections 21-2101 to 21-2117.

Source: Laws 1967, c. 100, § 17, p. 308.

ARTICLE 22

PROFESSIONAL CORPORATIONS

Cross References

For provisions relating to disclosure of confidential information, see section 8-1401.

Section

Section

21-2201 Act, how cited.

Sections 21-2201 to 21-2222 shall be known and may be cited as the Nebraska Professional Corporation Act.

Source: Laws 1969, c. 121, § 1, p. 555; Laws 1994, LB 488, § 1.

21-2202 Terms, defined.

For purposes of the Nebraska Professional Corporation Act, unless the context otherwise requires:

(1) Certificate of registration or registration certificate from or by the regulating board means either a document prepared and issued by the regulating board or the electronic accessing of the regulating board's licensing records by the Secretary of State;

(2) Professional corporation means a corporation which is organized under the act for the specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the corporation;

(3) Professional service means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which, except for the services of a real estate broker, prior to the passage of the act and by reason of law could not be performed by a corporation, including, but not limited to, personal services rendered by a certified public accountant, public accountant, dentist, osteopathic physician, physician and surgeon, veterinarian, real estate broker, associate real estate broker, real estate salesperson, or attorney at law. For purposes of the act, those professions pertaining to the diagnosis, care, and treatment of humans shall be considered to be of the same profession; and

(4) Regulating board means a board which is charged with the licensing and regulating of the practice or profession which the professional corporation is organized to render.

Source: Laws 1969, c. 121, § 2, p. 555; Laws 1980, LB 893, § 1; Laws 1989, LB 342, § 1; Laws 1995, LB 406, § 2.

21-2203 Powers, benefits, and privileges.

Except as the Nebraska Professional Corporation Act shall otherwise require, professional corporations shall enjoy all the powers, benefits, and privileges

and be subject to all the duties, restrictions, and liabilities of a business corporation under the Business Corporation Act and sections 21-301 to 21-325.

Source: Laws 1969, c. 121, § 3, p. 556; Laws 1995, LB 109, § 208.

Cross References

Business Corporation Act, see section 21-2001.

21-2204 Articles of incorporation; certificate of registration; filing.

(1) One or more individuals residing within the State of Nebraska, each of whom is licensed or otherwise legally authorized to render the same professional service, may, by filing articles of incorporation and a certificate of registration with the Secretary of State, organize and become a shareholder in a professional corporation. The articles of incorporation shall conform to the requirements of section 21-2018 and the certificate of registration shall conform to the requirements of sections 21-2216 to 21-2218.

(2) In addition to the requirements of subsection (1) of this section, the articles of incorporation shall contain a statement of the profession to be practiced by the corporation.

Source: Laws 1969, c. 121, § 4, p. 556; Laws 1995, LB 109, § 209; Laws 2004, LB 16, § 1.

21-2205 Professional services that may be rendered.

A professional corporation shall render only one type of professional service and such services as may be ancillary thereto and shall not engage in any other profession. No corporation organized and incorporated under the Nebraska Professional Corporation Act may render professional services except through its officers, employees, and agents who are duly licensed or otherwise legally authorized to render such professional services within this state. This section shall not be interpreted to include in the term employee, as used in the act, clerks, secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required.

A professional corporation may own real and personal property necessary or appropriate for rendering the type of professional services it was organized to render and may invest its funds in real estate, mortgages, stocks, bonds, and any other type of investments.

Source: Laws 1969, c. 121, § 5, p. 556; Laws 1997, LB 622, § 57.

21-2206 Corporate name.

The corporate name of a corporation organized under sections 21-2201 to 21-2222 shall contain the word professional corporation, or P.C. The use of the word company, corporation, incorporated, or any other word, abbreviation, affix or prefix indicating that it is a corporation in the corporate name of a corporation organized under sections 21-2201 to 21-2222, other than the words professional corporation, or the abbreviation P.C. is specifically prohibited.

Source: Laws 1969, c. 121, § 6, p. 557.

21-2207 Offices; designate in articles of incorporation; change; duties.

A professional corporation shall have only those offices which are designated by street address in the articles of incorporation, and shall not change any such office or offices without amendment of the articles of incorporation.

Source: Laws 1969, c. 121, § 7, p. 557.

21-2208 Shares of capital stock; issuance; transfer; conditions; violation; effect.

A professional corporation may issue shares of its capital stock only to persons who are duly registered in Nebraska to render the same professional service as that provided in its articles of incorporation. A shareholder in a professional corporation may voluntarily transfer his shares only to a person who is duly licensed to render the same professional service as that for which the corporation was organized. No shares shall be issued by or transferred upon the books of the professional corporation unless there has been filed with the Secretary of State a certificate by the regulating board stating that the person to whom the shares are to be issued or transferred is duly licensed to render the same professional service as that for which the corporation was organized. Any share transferred or issued in violation of this section shall be null and void.

Source: Laws 1969, c. 121, § 8, p. 557.

21-2209 Provision of services in another jurisdiction; license required, when; foreign corporation; requirements.

(1) A professional corporation may provide professional services in another jurisdiction if such corporation complies with all applicable laws of such jurisdiction regulating the rendering of professional services. Notwithstanding any other provision of the Nebraska Professional Corporation Act, no shareholder, director, officer, employee, or agent of a professional corporation shall be required to be licensed to render professional services in this state or to reside in this state if such shareholder, director, officer, employee, or agent does not render professional services in this state and is licensed in one or more states, territories of the United States, or the District of Columbia to render a professional service described in the professional corporation's articles of incorporation.

(2) A foreign professional corporation shall not transact business in this state unless it renders one of the professional services specified in subdivision (3) of section 21-2202 and complies with the provisions of the act, including, without limitation, registration with the appropriate regulating board in this state as provided in sections 21-2216 to 21-2218. A foreign professional corporation shall not transact business in this state if the laws of the jurisdiction under which such foreign professional corporation is incorporated do not allow for a professional corporation incorporated under the laws of this state to transact business in such jurisdiction.

(3)(a) A foreign professional corporation shall (i) apply for a certificate of authority in the same manner as a foreign business corporation pursuant to sections 21-20,168 to 21-20,181 and (ii) file with the Secretary of State a current certificate of registration as provided in sections 21-2216 to 21-2218.

(b) Except as otherwise provided in the Nebraska Professional Corporation Act, foreign professional corporations shall enjoy all the powers, benefits, and privileges and shall be subject to all the duties, restrictions, and liabilities of a

foreign business corporation under sections 21-301 to 21-325 and the Business Corporation Act.

(c) A foreign professional corporation shall not be required as a condition to obtaining a certificate of authority to have all of its shareholders, directors, and officers licensed to render professional services in this state if all of its shareholders, directors, and officers, except the secretary and assistant secretary, are licensed in one or more states or territories of the United States or the District of Columbia to render a professional service described in its articles of incorporation and any shareholder, director, officer, employee, or agent who renders professional services within this state on behalf of the foreign professional corporation is licensed to render professional services in this state.

(d) A foreign professional corporation shall not be required to obtain a certificate of authority to transact business in this state unless it maintains or intends to maintain an office in this state for the conduct of business or professional practice.

(4) For purposes of this section, foreign professional corporation shall mean a corporation which is organized under the law of any other state or territory of the United States or the District of Columbia for the specific purpose of rendering professional services and which has as its shareholders only individuals who are duly licensed or otherwise legally authorized to render the same professional services as the corporation.

Source: Laws 1994, LB 488, § 2; Laws 1995, LB 109, § 210; Laws 1995, LB 406, § 3; Laws 2004, LB 16, § 2.

Cross References

Business Corporation Act, see section 21-2001.

21-2210 Professional relationship and liabilities.

Nothing contained in sections 21-2201 to 21-2222 shall be interpreted to abolish, repeal, modify, restrict or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional services or to the standards of professional conduct. Any officer, shareholder, agent or employee of a corporation organized under sections 21-2201 to 21-2222 shall remain personally and fully liable and accountable for any negligent or wrongful act or misconduct committed by him, or by any person under his direct supervision and control, while rendering professional service on behalf of the corporation to the person for whom such professional services were being rendered. The corporation shall be liable up to the full value of its property for any negligent or wrongful acts or misconduct committed by any of its officers, agents or employees while they are engaged on behalf of the corporation.

Source: Laws 1969, c. 121, § 10, p. 558.

21-2211 Regulating board; powers.

Nothing in sections 21-2201 to 21-2222 shall restrict or limit in any manner the authority and duty of a regulating board in registering individuals licensed to perform professional services or the practice of the profession which is within the jurisdiction of such board, notwithstanding the fact that such individual is an officer, director, shareholder or employee of a professional

corporation and renders such professional service or engages in the practice of such profession through the professional corporation.

Source: Laws 1969, c. 121, § 11, p. 558.

21-2212 Death or disqualification of shareholder; purchase or redemption of shares.

The articles of incorporation or the bylaws of the professional corporation shall provide for the purchase or redemption of the shares of any shareholder upon his death or disqualification to render the professional services of the professional corporation within this state.

Source: Laws 1969, c. 121, § 12, p. 558.

21-2213 Officer, shareholder, agent, or employee; legally disqualified; effect.

If any officer, shareholder, agent, or employee of a corporation organized under sections 21-2201 to 21-2222 who has been rendering professional service to the public becomes legally disqualified to render such professional service within this state, or accepts employment that, pursuant to existing law, places restrictions or limitations upon his continued rendering of such professional services, he shall sever all employment with, and financial interests in, such corporation forthwith. A corporation's failure to require compliance with this provision shall constitute a ground for the forfeiture of its articles of incorporation and its dissolution.

Source: Laws 1969, c. 121, § 13, p. 558.

21-2214 Secretary of State; names of corporations; certify to Attorney General; legally disqualified officer, shareholder, agent, or employee; action for dissolution.

The Secretary of State shall certify to the Attorney General, from time to time, the names of all corporations organized pursuant to the provisions of sections 21-2201 to 21-2222 which have failed to comply with the provisions of section 21-2213. Whenever the Secretary of State shall certify the name of the corporation to the Attorney General as having given cause for dissolution, the Secretary of State shall concurrently mail to the corporation at its registered office a notice that such certification has been made. Upon the receipt of such certification, the Attorney General shall file an action in the name of the state against such corporation for its dissolution.

Source: Laws 1969, c. 121, § 14, p. 559.

21-2215 Involuntary dissolution; procedure.

Every action for the involuntary dissolution of a corporation failing to comply with the provisions of section 21-2213 shall be commenced by the Attorney General either in the district court of the county in which the registered office of the corporation is situated or in the district court of Lancaster County. Summons shall issue and be served as in other civil actions. If process is returned not found, the Attorney General shall cause publication to be made as in other civil cases in some newspaper published in the county where the last-known registered office of the corporation is situated, containing a notice of pendency of such action, the title of the court, the title of the action, and the date on and after which default may be entered. The Attorney General shall

cause a copy of such notice to be mailed to the corporation at its last-known registered office or mailing address within ten days after the first publication thereof. The certificate of the Attorney General of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for two successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than thirty days after the first publication of such notice.

Source: Laws 1969, c. 121, § 15, p. 559.

21-2216 Regulating board; certificate of registration; contents; filing; fee; display; electronic access; Secretary of State; duty; corporate suspension or dissolution; when.

(1) No corporation shall open, operate, or maintain an establishment or do business for any purposes set forth in the Nebraska Professional Corporation Act without (a) filing with the Secretary of State a certificate of registration from the regulating board of the particular profession for which the professional corporation is organized to do business, which certificate shall set forth the name and residence addresses of all shareholders as of the last day of the month preceding such filing, and (b) certifying that all shareholders, directors, and officers, except the secretary and the assistant secretary, are duly licensed to render the same professional services as those for which the corporation was organized. Application for a certificate of registration shall be made by the professional corporation to the regulating board in writing and shall contain the names of all officers, directors, shareholders, and professional employees of the professional corporation, the street address at which the applicant proposes to perform professional services, and such other information as may be required by the regulating board.

If it appears to the regulating board that each shareholder, officer, director, and professional employee of the applicant, except the secretary and the assistant secretary, is licensed to practice the profession of the applicant and that each shareholder, officer, director, or professional employee is not otherwise disqualified from performing the professional services of the applicant, such regulating board shall certify, in duplicate upon a form bearing its date of issuance and prescribed by such regulating board, that such proposed or existing professional corporation complies with the provisions of the act and of the applicable rules and regulations of such regulating board. Each applicant for such registration certificate shall pay such regulating board a fee of twenty-five dollars for the issuance of such duplicate certificate.

One copy of such certificate shall be prominently exposed to public view upon the premises of the principal place of business of each professional corporation organized under the act, and one copy shall be filed by the professional corporation with the Secretary of State who shall charge a fee of twenty-five dollars for filing the same. The certificate from the regulating board shall be filed in the office of the Secretary of State together with the articles of incorporation. A registration certificate bearing an issuance date more than twelve months old shall not be eligible for filing with the Secretary of State.

(2) When licensing records of regulating boards are electronically accessible, the Secretary of State shall access the records. The access shall be made in lieu of the certificate of registration or registration certificate being prepared and

issued by the regulating board. The professional corporation shall file with the Secretary of State an application setting forth the name and residence addresses of all officers, directors, shareholders, and professional employees as of the last day of the month preceding the date of the application and shall file with the Secretary of State a biennial update thereafter. Each application shall be accompanied by a licensure verification fee of fifty dollars. The Secretary of State shall verify that all of the directors, officers, shareholders, and professional employees listed on the application, except for the secretary and assistant secretary, are duly licensed or otherwise legally authorized to render the same professional service or an ancillary service as those for which the professional corporation was organized. Verification shall be done by electronically accessing the regulating board's licensing records. If any director, officer, shareholder, or professional employee is not licensed or otherwise legally authorized to perform the professional service that the professional corporation was organized to render, the corporation will be suspended. The biennial report and tax cannot be filed and paid in the office of the Secretary of State until the corporation attests in writing that the director, officer, shareholder, or professional employee is licensed or otherwise legally authorized to practice, which shall be verified by the Secretary of State, or is no longer a director, officer, shareholder, or professional employee of the corporation. When the biennial report and the tax become delinquent, the corporation shall be dissolved for nonpayment of taxes in compliance with section 21-323.

Source: Laws 1969, c. 121, § 16, p. 560; Laws 1971, LB 489, § 1; Laws 1973, LB 157, § 4; Laws 1976, LB 749, § 1; Laws 1982, LB 928, § 16; Laws 1992, LB 1019, § 27; Laws 1995, LB 406, § 4; Laws 2003, LB 524, § 18.

21-2217 Registration certificate; term; filing; failure to file; effect; not transferable.

Each registration certificate issued to each applicant shall expire by its own terms one year from the date of issuance and may not be renewed. Each professional corporation must annually apply to its regulating board for a registration certificate in the manner provided in section 21-2216. A certificate from the regulating board as provided in section 21-2216 must annually be filed with the Secretary of State within thirty days of the expiration date of the last certificate on file in the office of the Secretary of State or such corporation shall be suspended. If the corporation is suspended, the biennial report and tax cannot be filed and paid in the office of the Secretary of State until the certificate from the regulating board is filed in the office of the Secretary of State. If the report is not filed, the tax paid, and the certificate filed by April 16 of the current year, when the report and tax become delinquent, the corporation shall be dissolved for nonpayment of taxes in compliance with section 21-323. Registration certificates shall not be transferable or assignable.

Source: Laws 1969, c. 121, § 17, p. 561; Laws 1971, LB 489, § 2; Laws 1973, LB 157, § 5; Laws 1987, LB 186, § 2; Laws 2003, LB 524, § 19.

21-2218 Regulating board; certificate of registration; revoke or suspend; procedure.

The regulating board may, upon a form prescribed by it, suspend or revoke any certificate of registration of any professional corporation, upon the revocation or suspension of the license to render professional service of any officer, director, shareholder, or professional employee of a holder of a certificate of registration. Notice of such revocation shall be provided the professional corporation affected by sending by certified or registered United States mail a certified copy of such revocation to the professional corporation at its principal place of business set forth in the registration certificate so revoked. At the same time, the regulating board shall forward by regular United States mail a certified copy of such revocation to the Secretary of State who shall thereupon remove the revoked registration certificate from his file and deliver the same to such regulating board.

Source: Laws 1969, c. 121, § 18, p. 561.

21-2219 Merger or consolidation.

A professional corporation organized under the provisions of the Nebraska Professional Corporation Act may consolidate or merge with another domestic professional corporation organized under the act to render the same professional service or a foreign professional corporation admitted or which would qualify to be admitted under the act to render the same professional service in this state.

Source: Laws 1969, c. 121, § 19, p. 561; Laws 1994, LB 488, § 3.

21-2220 Sections; attorneys at law; applicability.

The provisions of sections 21-2201 to 21-2222 shall be applicable to attorneys at law only to the extent and under such terms and conditions as the Supreme Court of the State of Nebraska shall determine to be necessary and appropriate. Articles of incorporation of professional corporations organized to practice law shall contain such provisions as may be appropriate to comply with applicable rules of the court.

Source: Laws 1969, c. 121, § 20, p. 561.

21-2221 Sections; when not applicable.

Sections 21-2201 to 21-2222 shall not apply to any individual or group of individuals within this state who prior to December 25, 1969, were permitted to organize a corporation and perform personal services to the public by the means of a corporation, and sections 21-2201 to 21-2222 shall not apply to any corporations organized by such individual or group of individuals prior to December 25, 1969; *Provided,* any such individual or group of individuals or any such corporation may bring themselves and such corporation within the provisions of sections 21-2201 to 21-2222 by amending the articles of incorporation in such a manner as to be consistent with all the provisions of sections 21-2201 to 21-2222 and by affirmatively stating in the amended articles of incorporation that the shareholders have elected to bring the corporation within the provisions of sections 21-2201 to 21-2222.

Source: Laws 1969, c. 121, § 21, p. 562.

21-2222 Rights of natural persons.

Nothing contained in the Nebraska Professional Corporation Act is intended to alter the right of natural persons licensed to provide professional service to organize as a partnership, a limited liability company, an unincorporated association, a business trust, or any other lawful form of business organization.

Source: Laws 1969, c. 121, § 22, p. 562; Laws 1993, LB 121, § 158.

ARTICLE 23

NEBRASKA INDUSTRIAL DEVELOPMENT CORPORATION ACT

Cross References

For provisions relating to disclosure of confidential information, see section 8-1401.

Section

21-2301 Terms, defined.

For purposes of the Nebraska Industrial Development Corporation Act, unless the context otherwise requires:

(1) Corporation means any corporation organized pursuant to the act;

(2) Local political subdivision means any county or any city of the metropolitan class; and

(3) Project means any land and any building or other improvement on the land, 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 of the following: (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, telephone, or other services commonly classified as public utilities.

Source: Laws 1972, LB 1517, § 1; Laws 1995, LB 494, § 1.

21-2302 Legislative intent.

It is the intent of the Legislature to authorize the incorporation in any local political subdivision 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 local political subdivision 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 the corporations with all the powers that may be necessary to enable them to accomplish their purposes, except that the corporations shall not have the power of eminent domain. It is not intended that the corporations themselves be authorized to operate any such manufacturing, industrial, commercial, or research enterprise. The Nebraska Industrial Development Corporation Act shall be liberally construed in conformity with such intention.

Source: Laws 1972, LB 1517, § 2; Laws 1995, LB 494, § 2.

21-2303 Incorporation; procedure; application; approval.

Whenever any number of natural persons, not less than three, each of whom shall be a duly qualified elector of and taxpayer in the local political subdivision, file with the governing body of any local political subdivision an application in writing seeking permission to apply for the incorporation of an industrial development board of the local political subdivision, the governing body shall proceed to consider the application. If the governing body, by appropriate resolution duly adopted, (1) finds and determines that it is wise, expedient, necessary, or advisable that the corporation be formed, (2) authorizes the persons making the application to proceed to form the corporation, and (3) approves the form of the articles of incorporation proposed to be used in organizing the corporation, then the persons making the application shall execute, acknowledge, and file articles of incorporation for the corporation under the Nebraska Industrial Development Corporation Act. No corporation may be formed unless the application has first been filed with the governing body of the local political subdivision and the governing body has adopted a resolution pursuant to this section.

Source: Laws 1972, LB 1517, § 3; Laws 1995, LB 494, § 3.

21-2304 Articles of incorporation; contents.

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 local political subdivision, (2) the name of the corporation, (3) a recital that permission to organize the corporation has been granted by resolution duly adopted by the governing body of the local political subdivision and the date of the adoption of the resolution, (4) the location of the registered office of the corporation, which shall be in the local political subdivision, and

the name of its registered agent at such office, (5) the purposes for which the corporation is organized, (6) the number of directors of the corporation, (7) the period, if any, of duration of the corporation, and (8) any other matter which the applicants choose to insert in the articles of incorporation which is not inconsistent with the Nebraska Industrial Development Corporation Act or with the laws of this state. The articles of incorporation shall be subscribed and acknowledged before a notary public by each of the applicants.

Source: Laws 1972, LB 1517, § 4; Laws 1995, LB 494, § 4.

21-2305 Articles of incorporation; filing.

When executed and notarized under section 21-2304, the articles of incorporation shall be filed with the Secretary of State. The Secretary of State shall examine the articles of incorporation and, if he or she finds (1) that the recitals contained in the articles of incorporation are correct, (2) that the requirements of section 21-2304 have been complied with, and (3) that the name of the corporation is not identical with or similar enough to the name of another corporation already in existence in this state as to lead to confusion and uncertainty, the Secretary of State shall approve the articles of incorporation and record them in his or her office. When the articles of incorporation have been made, filed, and approved the applicants shall constitute a corporation under the name set out in the articles of incorporation pursuant to the Nebraska Industrial Development Corporation Act.

Source: Laws 1972, LB 1517, § 5; Laws 1995, LB 494, § 5.

21-2306 Articles of incorporation; amendment; procedure.

The articles of incorporation may at any time be amended to make any changes or add any provisions which might have been included in the first instance. To amend the articles of incorporation, the members of the board of directors of the corporation shall file with the governing body of the local political subdivision an application in writing seeking permission to amend the articles of incorporation and specifying in the application the amendment proposed to be made. The governing body shall consider the application and if by appropriate resolution it (1) duly finds and determines that it is wise, expedient, necessary, or advisable that the proposed amendment be made, (2) authorizes the same to be made, and (3) approves the form of the proposed amendment, then the persons making the application shall execute an instrument embodying the amendment specified in the application. The instrument shall be subscribed and acknowledged before a notary public by each member of the board of directors and shall be filed with the Secretary of State. The Secretary of State shall examine the proposed amendment and, if he or she 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, the Secretary of State shall approve the amendment and record it in his or her office. When the amendment has been made, filed, and approved it shall become effective and the articles of incorporation shall be amended pursuant to the amendment. The articles of incorporation under the Nebraska Industrial Development Corporation Act shall be amended only as provided in this section.

Source: Laws 1972, LB 1517, § 6; Laws 1995, LB 494, § 6.

21-2307 Board of directors; qualifications; expenses; public meetings.

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 local political subdivision. The directors shall serve without compensation except that they shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties under the Nebraska Industrial Development Corporation Act pursuant to sections 81-1174 to 81-1177. The directors shall be elected by the governing body of the local political subdivision. Any meeting held by the board of directors for any purpose shall be open to the public.

Source: Laws 1972, LB 1517, § 7; Laws 1981, LB 204, § 20; Laws 1995, LB 494, § 7.

21-2308 Corporate powers.

(1) The corporation shall have the following powers together with all powers incidental or necessary for the performance of its duties under the Nebraska Industrial Development Corporation Act: (a) To have succession by its corporate name for the period specified in the articles of incorporation unless sooner dissolved as provided in section 21-2314, (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 corporate seal 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 with the projects and regardless of whether or not any of the projects shall be in existence, (e) to lease to others any or all of its projects and to charge and collect rent for the projects and to terminate any lease upon the failure of the lessee to comply with any of the obligations of the lease, (f) to sell, exchange, donate, and convey any or all of its properties whenever its board of directors find the 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 its powers, (h) to mortgage and pledge any or all of its projects or any part or parts of its projects, whether then owned or thereafter acquired, and to pledge the revenue and receipts from the mortgage or pledge as security for the payment of the principal and interest on any bonds issued and any agreements made in connection with the bonds issued, and (i) to employ and pay compensation to the employees and agents, including attorneys, as the board of directors deem necessary for the business of the corporation.

(2)(a) If the local political subdivision is a county, any project or projects of the corporation shall be located within the county, except that in no event shall any project or part of a project be located within the corporate limits of a city or village.

(b) If the local political subdivision is a city of the metropolitan class, any project or projects of the corporation may be located within or without or partially within and partially without the city of the metropolitan class, subject to the following conditions: (i) No project or part of a project shall be located more than twenty-five miles from the corporate limits of the city of the metropolitan class, (ii) in no event shall any project or part of a project be

located within the corporate limits of another city or of any village in this state, (iii) no project or part of a project shall be located within the police jurisdiction of another city or of any village in this state unless the governing body of the city or village has adopted a resolution consenting to the location of the project or part of the project in the police jurisdiction of the city or village, and (iv) no project or part of a project shall be located in a county other than that in which the city of the metropolitan class is situated unless the board of county commissioners of the other county has adopted a resolution consenting to the location of the project or part of the project in the county.

(c) The corporation shall not operate any project as a business other than as a lessor.

Source: Laws 1972, LB 1517, § 9; Laws 1995, LB 494, § 8; Laws 1996, LB 931, § 1.

21-2309 Corporate bonds; payment.

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. The bonds may be executed and delivered by the corporation at any time, may be in a form and in denominations and of a tenor and maturities, may be in registered or bearer form either as to principal or interest or both, may be payable in installments and at a time or times not exceeding forty years from the date of issuance, may be payable at a place or places whether within or without the State of Nebraska, may bear interest at a rate or rates payable at a time or times and at a place or places and evidenced in a manner, may be executed by officers of the corporation and in a manner, and may contain provisions not inconsistent with this section, as provided in the proceedings of the board of directors authorizing the bonds to be issued. If deemed advisable by the board of directors, there may be included in the proceedings under which bonds of the corporation are authorized to be issued, an option to redeem all or any part of the bonds as specified in the proceedings at a price or prices and after notice or notices and on terms and conditions as set forth in the proceedings and as summarized on the face of the bonds. This section shall not 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 the bonds are issued. Any bonds of the corporation may be sold at public or private sale in a manner and from time to time as determined by the board of directors to be most advantageous. The corporation may pay all expenses, premiums, and commissions which its board of directors deems necessary or advantageous in connection with the issuance of the bonds. 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 are issued shall recognize and protect any prior pledge or mortgage made for a prior issue of bonds, unless in the proceedings authorizing the prior issue the right was reserved to issue subsequent bonds on a parity with the prior issue. Any bonds of the corporation at any time outstanding may at any time be refunded by the corporation by the issuance of refunding bonds in an amount the board of directors deems necessary, but not exceeding an amount sufficient to refund the principal of the bonds to be refunded, together with any unpaid interest on the bonds to be

refunded and any premiums and commissions necessary to be paid in connection therewith. Any refunding may be effected whether the bonds to be refunded shall have matured at that time or at a later date, either by sale of the refunding bonds and the application of the proceeds of the refunding bonds for the payment of the bonds to be refunded, or by the exchange of the refunding bonds for the bonds to be refunded with the consent of the holders of the bonds 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 are payable on the same date or on different dates or are due serially or otherwise. All bonds and the interest coupons applicable to the bonds are negotiable instruments.

Source: Laws 1972, LB 1517, § 10; Laws 1995, LB 494, § 9.

21-2310 Bonds; security.

The principal of and interest on bonds issued by the corporation shall be secured by a pledge of the revenue and receipts out of which the principal of and interest on the bonds is 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 pledged may be derived, including any enlargements of and additions to any projects made at a later date. The resolution under which the bonds are authorized to be issued and any 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 the revenue and the rights and remedies available in the event of default, all as the board of directors deems 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 pledge, agreement, mortgage, and deed of trust were made shall have been fully paid. In the event of default in 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 for the bonds, 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 the remedies.

Source: Laws 1972, LB 1517, § 11; Laws 1995, LB 494, § 10.

21-2311 Corporation; property; bonds; exempt from taxation.

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

Source: Laws 1972, LB 1517, § 12; Laws 1995, LB 494, § 11.

21-2312 Local political subdivision; liability; exempt.

The local political subdivision shall not 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 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 local political subdivision within the meaning of any constitutional or statutory provision.

Source: Laws 1972, LB 1517, § 13; Laws 1995, LB 494, § 12.

21-2313 Corporation; nonprofit.

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 determines 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 local political subdivision with respect to which the corporation was organized.

Source: Laws 1972, LB 1517, § 14; Laws 1995, LB 494, § 13.

21-2314 Corporation; dissolution; effect.

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

Source: Laws 1972, LB 1517, § 15; Laws 1995, LB 494, § 14.

21-2315 Corporation; documents; filing without payment of fees or taxes.

The articles of incorporation, any deeds or other documents conveying properties 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 fees as authorized by law for the recording of the instruments.

Source: Laws 1972, LB 1517, § 16; Laws 1995, LB 494, § 15.

21-2316 Act; how construed.

The Nebraska Industrial Development Corporation Act shall not be construed as a restriction or limitation upon 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 for the bonds or instrument, except as provided in the act, any other law to the contrary notwithstanding, but nothing in the 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 of any

official or agency of the state and its governmental subdivisions which may be otherwise provided by law.

Source: Laws 1972, LB 1517, § 17; Laws 1995, LB 494, § 16.

21-2317 Corporation incorporated under Nebraska Nonprofit Corporation Act; validated.

In all cases when there has been an attempt to incorporate a local political subdivision 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 the Nebraska Industrial Development Corporation Act, the corporation may, with the approval of the governing body of the local political subdivision in which it is located, become validated ab initio as a corporation organized under and governed by the act with respect to any bonds 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 the act.

Source: Laws 1972, LB 1517, § 18; Laws 1995, LB 494, § 17; Laws 1996, LB 681, § 182.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

21-2318 Act, how cited.

Sections 21-2301 to 21-2318 shall be known and may be cited as the Nebraska Industrial Development Corporation Act.

Source: Laws 1972, LB 1517, § 19.

ARTICLE 24

SHAREHOLDERS PROTECTION ACT

Section
21-2401. Repealed. Laws 1983, LB 599, § 15.
21-2402. Repealed. Laws 1983, LB 599, § 15.
21-2403. Repealed. Laws 1983, LB 599, § 15.
21-2404. Repealed. Laws 1983, LB 599, § 15.
21-2405. Repealed. Laws 1983, LB 599, § 15.
21-2406. Repealed. Laws 1983, LB 599, § 15.
21-2407. Repealed. Laws 1983, LB 599, § 15.
21-2408. Repealed. Laws 1983, LB 599, § 15.
21-2409. Repealed. Laws 1983, LB 599, § 15.
21-2410. Repealed. Laws 1983, LB 599, § 15.
21-2411. Repealed. Laws 1983, LB 599, § 15.
21-2412. Repealed. Laws 1983, LB 599, § 15.
21-2413. Repealed. Laws 1983, LB 599, § 15.
21-2414. Repealed. Laws 1983, LB 599, § 15.
21-2415. Repealed. Laws 1983, LB 599, § 15.
21-2416. Repealed. Laws 1983, LB 599, § 15.
21-2417. Repealed. Laws 1983, LB 599, § 15.
21-2418. Repealed. Laws 1988, LB 1110, § 26.
21-2419. Repealed. Laws 1988, LB 1110, § 26.
21-2420. Repealed. Laws 1988, LB 1110, § 26.
21-2421. Repealed. Laws 1988, LB 1110, § 26.
21-2422. Repealed. Laws 1988, LB 1110, § 26.
21-2423. Repealed. Laws 1988, LB 1110, § 26.

Section

21-2401 Repealed. Laws 1983, LB 599, § 15.

21-2402 Repealed. Laws 1983, LB 599, § 15.

21-2403 Repealed. Laws 1983, LB 599, § 15.

21-2404 Repealed. Laws 1983, LB 599, § 15.

21-2405 Repealed. Laws 1983, LB 599, § 15.

21-2406 Repealed. Laws 1983, LB 599, § 15.

21-2407 Repealed. Laws 1983, LB 599, § 15.

21-2408 Repealed. Laws 1983, LB 599, § 15.

21-2409 Repealed. Laws 1983, LB 599, § 15.

21-2410 Repealed. Laws 1983, LB 599, § 15.

21-2411 Repealed. Laws 1983, LB 599, § 15.

21-2412 Repealed. Laws 1983, LB 599, § 15.

21-2413 Repealed. Laws 1983, LB 599, § 15.

21-2414 Repealed. Laws 1983, LB 599, § 15.

21-2415 Repealed. Laws 1983, LB 599, § 15.

21-2416 Repealed. Laws 1983, LB 599, § 15.

21-2417 Repealed. Laws 1983, LB 599, § 15.

21-2418 Repealed. Laws 1988, LB 1110, § 26.

21-2419 Repealed. Laws 1988, LB 1110, § 26.

21-2420 Repealed. Laws 1988, LB 1110, § 26.

21-2421 Repealed. Laws 1988, LB 1110, § 26.

21-2422 Repealed. Laws 1988, LB 1110, § 26.

21-2423 Repealed. Laws 1988, LB 1110, § 26.

21-2424 Repealed. Laws 1988, LB 1110, § 26.

21-2425 Repealed. Laws 1988, LB 1110, § 26.

21-2426 Repealed. Laws 1988, LB 1110, § 26.

21-2427 Repealed. Laws 1988, LB 1110, § 26.

21-2428 Repealed. Laws 1988, LB 1110, § 26.

21-2429 Repealed. Laws 1988, LB 1110, § 26.

21-2430 Repealed. Laws 1988, LB 1110, § 26.

21-2431 Act, how cited.

Sections 21-2431 to 21-2453 shall be known and may be cited as the Shareholders Protection Act.

Source: Laws 1988, LB 1110, § 2.

21-2432 Legislative declarations.

It is declared that:

(1) This state has traditionally regulated the affairs of corporations, including the regulation of mergers and other business combinations. The United States Supreme Court has recently reaffirmed the power of states to regulate these affairs;

(2) Issuing public corporations encompass, represent, and affect, through their ongoing business operations, a variety of constituencies including shareholders, employees, customers, suppliers, and local communities and their economies whose welfare is vital to this state's interests;

(3) In order to promote the welfare of these constituencies, the regulation of the internal affairs of issuing public corporations by the laws of this state governing business corporations should allow for the stable, long-term growth of issuing public corporations;

(4) Business combinations involving public corporations frequently occur through acquisition techniques which in effect coerce shareholders to participate in the transaction;

(5) Business combinations involving public corporations are also frequently financed largely through debt to be repaid in the short term through changes in

operations of the public corporation, the sale of assets of the public corporation, and other means. These measures involve a substantial risk of unfair business dealing, may prevent shareholders from realizing the full value of their holdings through forced mergers and other coercive devices, and may undermine the state's interest in promoting stable relationships involving the corporations that it charters; and

(6) The Shareholders Protection Act is not intended to alter the case law development on directors' fiduciary duties of care and loyalty in responding to challenges to control or the burden of proof with regard to compliance with those duties, nor is the act intended to prevent the use of any other lawful defensive measure.

Source: Laws 1988, LB 1110, § 1.

21-2433 Definitions, where found.

For purposes of the Shareholders Protection Act, unless the context otherwise requires, the definitions found in sections 21-2434 to 21-2447 shall be used.

Source: Laws 1988, LB 1110, § 3.

21-2434 Acquiring person, defined.

Acquiring person shall mean a person who makes or proposes to make a control-share acquisition. If two or more persons act as a partnership, limited partnership, limited liability company, syndicate, or other group pursuant to any agreement, arrangement, relationship, or understanding, whether or not in writing, for the purpose of acquiring, owning, or voting shares of an issuing public corporation, all members of the partnership, limited partnership, limited liability company, syndicate, or other group shall constitute a person for purposes of this section.

Source: Laws 1988, LB 1110, § 4; Laws 1993, LB 121, § 159.

21-2435 Affiliate, defined.

Affiliate shall mean a person who directly or indirectly controls, is controlled by, or is under common control with another person.

Source: Laws 1988, LB 1110, § 5.

21-2436 Associate, defined.

Associate, when used to indicate a relationship with any person, shall mean any of the following: (1) Any corporation, limited liability company, or organization of which the person is an officer, director, member, or partner or is, directly or indirectly, the owner of ten percent or more of any class of voting stock; (2) any trust or estate in which the person has at least a ten percent beneficial interest or as to which the person serves as trustee or personal representative or in a similar fiduciary capacity; and (3) any relative or spouse of the person, or any relative of the spouse, who has the same residence as such person.

Source: Laws 1988, LB 1110, § 6; Laws 1993, LB 121, § 160.

21-2437 Business combination, defined.

Business combination, when used in reference to any issuing public corporation and any interested shareholder of the issuing public corporation, shall mean:

(1) Any merger or consolidation of the issuing public corporation or any subsidiary of the issuing public corporation with:

(a) The interested shareholder; or

(b) Any other corporation, whether or not such other corporation is an interested shareholder of the issuing public corporation, that is or after the merger or consolidation would be an affiliate or associate of the interested shareholder;

(2) Any sale, lease, exchange, mortgage, pledge, transfer, or other disposition in a single transaction or a series of transactions to or with the interested shareholder or any affiliate or associate of the interested shareholder of assets of the issuing public corporation or any subsidiary of the issuing public corporation:

(a) Having an aggregate market value equal to ten percent or more of the aggregate market value of all the assets, determined on a consolidated basis, of the issuing public corporation; or

(b) Having an aggregate market value equal to ten percent or more of the aggregate market value of all the outstanding shares of the issuing public corporation;

(3) Any transaction or series of transactions which results in the issuance or transfer by the corporation or by any subsidiary of the corporation of any stock of the corporation or of such subsidiary to the interested shareholder if such stock has an aggregate market value equal to at least five percent of the aggregate market value of all the outstanding shares of the corporation except pursuant to the exercise of warrants or rights to purchase stock offered or distributed, or a dividend or distribution paid or made, pro rata to all shareholders of the issuing public corporation and except pursuant to the exercise or conversion of securities exercisable for or convertible into stock of such corporation or any such subsidiary, which securities were outstanding prior to the time that the interested shareholder became an interested shareholder;

(4) Any transaction involving the corporation or any subsidiary of the corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the corporation or of any such subsidiary which is owned directly or indirectly by the interested shareholder except as a result of immaterial changes due to fractional share adjustments; or

(5) Any receipt by the interested shareholder or any affiliate or associate of the interested shareholder of the benefit, directly or indirectly, except proportionately as a shareholder of the issuing public corporation, of any loans, advances, guarantees, pledges, or other financial assistance or any tax credits or other tax advantages provided by or through the issuing public corporation or any subsidiary of the issuing public corporation.

Source: Laws 1988, LB 1110, § 7.

21-2438 Control, controlling, controlled by, or under common control with, defined.

Control, controlling, controlled by, or under common control with shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. A person who is the owner of ten percent or more of a corporation's outstanding voting stock shall be presumed to have control of the corporation in the absence of proof by a preponderance of the evidence to the contrary. A person shall not be considered to have control of a corporation if the person holds voting power, in good faith and not for the purpose of avoiding the Shareholders Protection Act, as an agent, bank, broker, nominee, custodian, or trustee for one or more owners who do not individually or as a group have control of the corporation.

Source: Laws 1988, LB 1110, § 8.

21-2439 Control-share acquisition, defined.

Control-share acquisition shall mean an acquisition, directly or indirectly, by an acquiring person of ownership of voting stock of an issuing public corporation that, except for the Shareholders Protection Act, would, when added to all other shares of the issuing public corporation owned by the acquiring person, entitle the acquiring person, immediately after the acquisition, to exercise or direct the exercise of a new range of voting power within any of the following ranges of voting power: (1) At least twenty percent but less than thirty-three and one-third percent; (2) at least thirty-three and one-third percent but less than or equal to fifty percent; or (3) over fifty percent.

The acquisition of any shares of an issuing public corporation shall not constitute a control-share acquisition if the acquisition is consummated in any of the following circumstances: (a) Before April 9, 1988; (b) pursuant to a contract existing before April 9, 1988; (c) pursuant to the laws of descent and distribution; (d) pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing the Shareholders Protection Act; (e) pursuant to a merger or plan of share exchange effected in compliance with sections 21-20,128 to 21-20,134 if the issuing public corporation is a party to the plan of merger or plan of share exchange; or (f) from a person who owns over fifty percent of the shares of an issuing public corporation and who acquired the shares prior to April 9, 1988.

All shares, the ownership of which is acquired within a one-hundred-twenty-day period, and all shares, the ownership of which is acquired pursuant to a plan to make a control-share acquisition, shall be deemed to have been acquired in the same acquisition.

Source: Laws 1988, LB 1110, § 9; Laws 1995, LB 109, § 211.

21-2440 Interested shareholder, defined.

Interested shareholder shall mean any person, other than the issuing public corporation or any subsidiary of the issuing public corporation, who is (1) the owner, directly or indirectly, of ten percent or more of the outstanding voting stock of such corporation or (2) an affiliate or associate of such corporation and at any time within the five-year period immediately prior to the date in question was the owner, directly or indirectly, of ten percent or more of the then outstanding voting stock of such corporation. For the purpose of determining whether a person is an interested shareholder, the number of shares of voting stock of such corporation deemed to be outstanding shall include shares

deemed to be owned by such person but shall not include any other unissued shares of voting stock of such corporation which may be issuable pursuant to any agreement, arrangement, or understanding or upon exercise of conversion rights, warrants, or options or otherwise.

Source: Laws 1988, LB 1110, § 10.

21-2441 Interested shares, defined.

Interested shares shall mean the voting stock of an issuing public corporation owned by an acquiring person.

Source: Laws 1988, LB 1110, § 11.

21-2442 Issuing public corporation, defined.

Issuing public corporation shall mean:

(1) A domestic corporation (a) which has one hundred or more shareholders and (b) which has (i) its principal executive offices within Nebraska, (ii) assets in Nebraska with a market value of at least ten million dollars, or (iii) ten percent or more of its shareholders resident in Nebraska or ten percent or more of its shares owned by Nebraska residents. For purposes of section 21-2453 only, the determination described in this subdivision shall be made as of the share acquisition date in question. The residence of a shareholder shall be presumed to be the address appearing on the records of the corporation; or

(2) A foreign corporation which has (a) one hundred or more shareholders, (b) its principal executive offices within Nebraska, (c) assets in Nebraska with a market value of at least ten million dollars, (d) ten percent or more of its shareholders resident in Nebraska or ten percent or more of its shares owned by Nebraska residents, and (e) at least five hundred employees in Nebraska. For purposes of section 21-2453 only, the determination described in this subdivision shall be made as of the share acquisition date in question. The residence of a shareholder shall be presumed to be the address appearing on the records of the corporation.

Source: Laws 1988, LB 1110, § 12.

21-2443 Owner, defined.

Owner, when used with respect to any stock of any class or series, shall mean a person who individually or with or through any affiliates or associates (1) beneficially owns such stock, directly or indirectly, (2) has (a) the right to acquire such stock, whether such right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding or upon the exercise of conversion rights, exchange rights, warrants, or options or otherwise, except that a person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates until such tendered stock is accepted for purchase or exchange or (b) the right to vote such stock pursuant to any agreement, arrangement, or understanding, except that a person shall not be deemed the owner of any stock if the agreement, arrangement, or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to ten or more persons, or (3) has any agreement, arrangement, or understanding for the purpose of acquiring, holding, voting, except voting pursuant to a revocable proxy or consent as

described in subdivision (2)(b) of this section, or disposing of such stock with any other person who beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such stock.

Source: Laws 1988, LB 1110, § 13.

21-2444 Person, defined.

Person shall mean any individual, corporation, partnership, limited liability company, unincorporated association, or other entity.

Source: Laws 1988, LB 1110, § 14; Laws 1993, LB 121, § 161.

21-2445 Share acquisition date, defined.

Share acquisition date, with respect to any person and any issuing public corporation, shall mean the date that the person first becomes an interested shareholder of the issuing public corporation.

Source: Laws 1988, LB 1110, § 15.

21-2446 Subsidiary of an issuing public corporation, defined.

Subsidiary of an issuing public corporation shall mean any other corporation of which voting stock having a majority of the votes entitled to be cast is owned, directly or indirectly, by such issuing public corporation.

Source: Laws 1988, LB 1110, § 16.

21-2447 Voting stock, defined.

Voting stock shall mean stock of any class or series entitled to vote generally in the election of directors.

Source: Laws 1988, LB 1110, § 17.

21-2448 Stock or other property; market value; how determined.

The market value of stock or property other than cash or stock shall be determined as follows:

(1) In the case of stock, by:

(a) The highest closing sale price during the thirty days immediately before the date in question of a share of the same class or series of stock on the composite tape for stocks listed on the New York Stock Exchange or, if the same class or series of stock is not quoted on the composite tape or if the same class or series of stock is not listed on the New York Stock Exchange, on the principal United States securities exchange registered under the federal Securities Exchange Act of 1934 on which the same class or series of stock is listed;

(b) If the same class or series of stock is not listed on an exchange described in subdivision (1)(a) of this section, the highest closing bid quotation for a share of the same class or series of stock during the thirty days immediately before the date in question on the National Association of Securities Dealers Automated Quotation System or any similar system then in use; or

(c) If no quotations described in subdivision (1)(b) of this section are available, the fair market value on the date in question of a share of the same class or series of stock as determined in good faith by the board of directors of the issuing public corporation; and

(2) In the case of property other than cash or stock, the fair market value of the property on the date in question as determined in good faith by the board of directors of the issuing public corporation.

Source: Laws 1988, LB 1110, § 18.

21-2449 Acquiring person; deliver information statement; contents; amendment.

(1) An acquiring person may deliver to the issuing public corporation at its principal executive office an information statement which shall contain all of the following:

(a) The identity of the acquiring person and the identity of each affiliate and associate of the acquiring person;

(b) A reference that the information statement is made under the Shareholders Protection Act;

(c) The number and class or series of shares of the issuing public corporation owned, directly or indirectly, prior to the control-share acquisition by each such person;

(d) The number and class or series of shares of the issuing public corporation acquired or proposed to be acquired pursuant to the control-share acquisition by each such person and specification of the following ranges of voting power that the acquiring person in good faith believes would result from consummation of the control-share acquisition:

(i) At least twenty percent but less than thirty-three and one-third percent;

(ii) At least thirty-three and one-third percent but less than or equal to fifty percent; or

(iii) Over fifty percent; and

(e) The terms of the control-share acquisition or proposed control-share acquisition, including such objective facts as would be substantially likely to affect the decision of a shareholder with respect to voting on the control-share acquisition.

(2) If any material change occurs in the facts set forth in the information statement including any material increase or decrease in the number of shares of the issuing public corporation acquired or proposed to be acquired by such person, the acquiring person shall promptly deliver to the issuing public corporation at its principal executive office an amendment to the information statement containing information relating to such material change.

Source: Laws 1988, LB 1110, § 19.

21-2450 Consideration of voting rights; special meeting; conditions.

(1) If the acquiring person (a) makes a request in writing for a special meeting of the shareholders at the time of delivery of the information statement, (b) has made a control-share acquisition or has made a bona fide written offer to make a control-share acquisition, and (c) gives a written undertaking, within ten days after receipt by the issuing public corporation of the information statement, to pay or reimburse the issuing public corporation's expenses of a special meeting of the shareholders, a special meeting of the shareholders of the issuing public corporation shall be called for the purpose of considering the voting rights to be accorded to shares acquired or to be acquired pursuant to

the control-share acquisition. The special meeting shall be held no later than fifty days after receipt of the information statement unless the acquiring person agrees to a later date. If the acquiring person so requests in writing at the time of delivery of the information statement, the special meeting shall not be held sooner than thirty days after receipt by the issuing corporation of the information statement.

(2) If no request for a special meeting is made, consideration of the voting rights to be accorded to shares acquired or to be acquired pursuant to the control-share acquisition shall be presented at the next special or annual meeting of the shareholders, notice of which has not been given prior to the receipt of the information statement, unless the matter of the voting rights becomes moot.

(3) The notice of the meeting shall be accompanied at a minimum by a copy of the information statement, a copy of any amendment to the information statement previously delivered to the issuing public corporation, and a statement disclosing that the board of the issuing public corporation recommends approval of, expresses no opinion and is remaining neutral toward, recommends rejection of, or is unable to take a position with respect to according voting rights to shares acquired or to be acquired in the control-share acquisition. The notice of meeting shall be given at least thirty days before the meeting.

Source: Laws 1988, LB 1110, § 20.

21-2451 Control-share acquisition; voting rights of shares.

Shares acquired in a control-share acquisition shall have the same voting rights as other shares of the same class or series in all elections of directors but shall have voting rights on all other matters only if approved by a vote of shareholders of the issuing public corporation at a special or annual meeting of shareholders pursuant to the Shareholders Protection Act and, to the extent so approved, shall have the same voting rights as other shares of the same class or series. Any such control-share acquisition shall be approved by (1) the affirmative vote of the holders of a majority of the shares entitled to vote which are not interested shares and (2) in the case of any shares entitled to vote as a class, the affirmative vote of the holders of a majority of the shares of such class which are not interested shares.

Any shares acquired in a control-share acquisition which do not have voting rights accorded to them by approval of a resolution of shareholders shall regain such voting rights on transfer to a person, other than the acquiring person or any affiliate or associate of the acquiring person, unless the acquisition of the shares by the other person constitutes a control-share acquisition, in which case the voting rights of the shares shall be subject to the Shareholders Protection Act.

Source: Laws 1988, LB 1110, § 21.

21-2452 Business combination; prohibited activities.

Except as provided in section 21-2453, no issuing public corporation shall engage in any business combination with any interested shareholder of the issuing public corporation for a period of five years after the interested shareholder's share acquisition date unless the business combination or the acquisition of shares made by the interested shareholder on the interested

shareholder's share acquisition date is approved by the board of directors of the issuing public corporation prior to the interested shareholder's share acquisition date.

Source: Laws 1988, LB 1110, § 22.

21-2453 Act; exemptions.

The Shareholders Protection Act shall not apply to any of the following:

(1) Unless the articles of incorporation provide otherwise, a business combination with an interested shareholder who was an interested shareholder immediately before April 9, 1988, unless the interested shareholder subsequently increased its ownership of the voting power of the outstanding voting stock of the issuing public corporation to a proportion in excess of the proportion of voting power that the interested shareholder owned immediately before April 9, 1988, excluding an increase approved by the board of directors of the issuing public corporation before the increase occurred;

(2) An issuing public corporation if the corporation's original articles of incorporation contain a provision expressly electing not to be governed by the act;

(3) An issuing public corporation if the corporation, by action of its board of directors, adopts an amendment to its bylaws within forty-five days of April 9, 1988, expressly electing not to be governed by the act, which amendment shall not be further amended by the board of directors;

(4) An issuing public corporation if the corporation does not have a class of voting stock that is listed on a national securities exchange or is authorized for quotation on an interdealer quotation system of a registered national securities association unless such circumstances result from action taken by an interested shareholder or a transaction in which a person becomes an interested shareholder;

(5) A business combination of an issuing public corporation with an interested shareholder which became an interested shareholder inadvertently and as soon as practicable divested sufficient shares so that the shareholder ceased to be an interested shareholder; or

(6) A business combination of an issuing public corporation with an interested shareholder which was an interested shareholder immediately before April 9, 1988, and inadvertently increased its ownership of the voting power of the outstanding voting stock of the issuing public corporation to a proportion in excess of the proportion of voting power that the interested shareholder owned immediately before April 9, 1988, if the interested shareholder divests itself of a sufficient amount of voting stock so that the interested shareholder is no longer the owner of a proportion of the voting power in excess of the proportion of voting power that the interested shareholder held immediately before April 9, 1988.

Source: Laws 1988, LB 1110, § 23.

ARTICLE 25
NAME PROTECTION

Section
21-2501. Act, how cited.
21-2502. Registration of corporate name; procedure; term.

Section
21-2503. Corporation dissolution; change of name; effect; continued use of name; not required.
21-2504. Corporate name; registration; assignment; procedure.
21-2505. Names registered; Secretary of State; duties.
21-2506. Secretary of State; cancel registration; when.
21-2507. False or fraudulent registration; liability.
21-2508. Wrongful use of registered name; liability; action to enjoin; other remedies.

21-2501 Act, how cited.

Sections 21-2501 to 21-2508 shall be known and may be cited as the Name Protection Act.

Source: Laws 1986, LB 1025, § 1.

21-2502 Registration of corporate name; procedure; term.

(1) Any corporation which has done business under a corporate name in the State of Nebraska for a period of twenty-five years or more may register such name with the Secretary of State by filing in the office of the Secretary of State, in duplicate, on a form to be furnished by the Secretary of State, an application for registration of that name setting forth the following information:

(a) The name and street address of the corporation applying for such registration and the state of incorporation;

(b) The date the name was first used anywhere and the date such name was first used in this state by the applicant; and

(c) A statement that the applicant is the owner of the name and that no other person has the right to use such name in this state either in the identical form or in such near resemblance as might be calculated to deceive or to be mistaken therefor.

(2) The application shall be signed by an officer of the corporation applying, whose signature shall be acknowledged before a notary public. The application shall be accompanied by a filing fee of two hundred dollars payable to the Secretary of State. The Secretary of State shall return a duplicate stamped copy with the date of filing to the applicant or the representative submitting the application for filing.

(3) Registration of the corporate name under this section shall be effective for ten years from the date of registration and shall not be renewable by the registrant.

Source: Laws 1986, LB 1025, § 2.

21-2503 Corporation dissolution; change of name; effect; continued use of name; not required.

Any corporation may be dissolved or may change its name from the name registered in accordance with the Name Protection Act, and such dissolution or change of name shall not be deemed an abandonment of any name registered pursuant to such act. Continued use of a registered name shall not be a prerequisite to protection of a registered name under such act.

Source: Laws 1986, LB 1025, § 3.

21-2504 Corporate name; registration; assignment; procedure.

Any corporate name and its registration shall be assignable by instruments in writing duly executed. The instruments shall include the street address, city, and state of the assignee and shall be recorded with the Secretary of State, in duplicate, upon the payment of a fee of five dollars payable to the Secretary of State who, upon recording the assignment, shall return the duplicate copy, stamped with the date of filing, to the applicant or the representative submitting the assignment for filing.

Source: Laws 1986, LB 1025, § 4.

21-2505 Names registered; Secretary of State; duties.

The Secretary of State shall keep for public information a record of all names registered under the Name Protection Act.

Source: Laws 1986, LB 1025, § 5.

21-2506 Secretary of State; cancel registration; when.

The Secretary of State shall cancel from the register:

(1) Any registration for which the Secretary of State receives a voluntary request for cancellation from the registrant or the assignee of record;

(2) All registrations granted under the Name Protection Act upon completion of the term of ten years from the date of registration;

(3) Any registration concerning which a court of competent jurisdiction finds:

(a) That the registration was granted improperly; or

(b) That the registration was obtained fraudulently; or

(4) Any registration which a court of competent jurisdiction orders canceled on any ground.

Source: Laws 1986, LB 1025, § 6.

21-2507 False or fraudulent registration; liability.

Any person who for himself or herself or on behalf of any other person files or registers any name in the office of the Secretary of State under the Name Protection Act by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured in any court of competent jurisdiction.

Source: Laws 1986, LB 1025, § 7.

21-2508 Wrongful use of registered name; liability; action to enjoin; other remedies.

Any person shall be liable in a civil action by the owner of a registered name for a wrongful use of such name, and any owner of a name registered under the Name Protection Act may enjoin the wrongful use of the registered name. Any court of competent jurisdiction may grant an injunction to restrain such use and may require the defendant to pay to such owner all profits derived from and all damages suffered by reason of such wrongful use. Proof of monetary damage, loss of profits, competition between the parties, or intent to deceive shall not be required. Costs shall be allowed to the prevailing party unless the court otherwise directs. The court, in its discretion, may award attorney's fees

to the prevailing party if (1) the party complaining of the improper or unauthorized use of a registered name has brought an action which he or she knew to be groundless or (2) the party charged with the improper or unauthorized use of a registered name has willfully engaged in the improper or unauthorized use of the registered name. The relief provided in this section is in addition to remedies otherwise available for the same conduct under the common law or other statutes of this state.

Source: Laws 1986, LB 1025, § 8.

ARTICLE 26

LIMITED LIABILITY COMPANIES

Section

21-2601 Act, how cited.

Sections 21-2601 to 21-2653 shall be known and may be cited as the Limited Liability Company Act.

Source: Laws 1993, LB 121, § 1; Laws 1994, LB 884, § 25; Laws 1997, LB 44, § 7; Laws 2006, LB 647, § 4.

21-2601.01 Terms, defined.

For purposes of the Limited Liability Company Act, unless the context otherwise requires:

(1) Certificate of registration or registration certificate from or by the regulating board means either a document prepared and issued by the regulating board or the electronic accessing of the regulating board's licensing records by the Secretary of State;

(2) Professional limited liability company means a limited liability company which is organized under the act for the specific purpose of rendering a professional service and which has as its members only individuals who themselves are duly licensed or otherwise legally authorized by a regulating board within this state to render the same professional service as the limited liability company;

(3) Professional service means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which includes, but is not limited to, personal services rendered by a certified public accountant, public accountant, dentist, osteopathic physician, physician and surgeon, veterinarian, real estate broker, associate real estate broker, real estate salesperson, or attorney at law. For purposes of the act, those professions pertaining to the diagnosis, care, and treatment of humans shall be considered to be of the same profession; and

(4) Regulating board means a board which is charged with the licensing and regulating of the practice or profession which the professional limited liability company is organized to render.

Source: Laws 2006, LB 647, § 5.

21-2602 Organization of company; purpose; deemed a syndicate; exceptions.

(1) A limited liability company may be organized pursuant to the Limited Liability Company Act for any lawful purpose other than for the purpose of being an insurer as described in section 44-102.

(2) A limited liability company organized pursuant to the act shall be deemed to be a syndicate for purposes of Article XII, section 8, of the Constitution of Nebraska, except that a limited liability company in which the members are members of a family, or a trust created for the benefit of a member of that family, related to one another within the fourth degree of kindred according to the rules of civil law, or their spouses, at least one of whom is a person residing on or actively engaged in the day-to-day labor and management of the farm or ranch, and none of whom are nonresident aliens, shall not be deemed to be a syndicate for purposes of Article XII, section 8, of the Constitution of Nebraska.

Source: Laws 1993, LB 121, § 2; Laws 1994, LB 884, § 26; Laws 1996, LB 681, § 183; Laws 2003, LB 127, § 1.

21-2603 Powers.

A limited liability company organized pursuant to and existing under the Limited Liability Company Act may:

(1) Sue, be sued, complain, and defend in its name;

(2) Purchase, take, receive, lease, and otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or an interest in real or personal property wherever situated;

(3) Sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(4) Lend money to and otherwise assist its members;

(5) Purchase, take, receive, subscribe for, and otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, and otherwise dispose of, use, and deal in and with shares or other interests in or obligations of other limited liability companies, domestic or foreign corporations, associations, general or limited partnerships, or individuals or direct or indirect obligations of the United States or of any government, state, territory, governmental district, or municipality or of any instrumentality thereof;

(6) Make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the limited liability company may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any part of its property, franchises, and income;

(7) Lend money for its proper purposes, invest and reinvest its funds, and take and hold real property and personal property for the payment of funds loaned or invested;

(8) Conduct its business, carry on its operations, and have and exercise the powers granted by the act in any state, territory, district, or possession of the United States or in any foreign country;

(9) Elect or appoint one or more managers and agents of the limited liability company and define their duties and fix their compensation;

(10) Make and alter operating agreements, not inconsistent with its articles of organization or with the laws of this state, for the administration and regulation of the affairs of the limited liability company;

(11)(a) Indemnify a member, manager, or former member or manager of the limited liability company against expenses actually and reasonably incurred in connection with the defense of a civil or criminal action, suit, or proceeding in which such person is made a party by reason of being or having been a member or manager except in matters as to which such person is adjudged in the action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty and (b) make any other indemnification that is authorized by the articles of organization or by an article of the operating agreement or resolution adopted by the members after notice;

(12) Cease its activities and surrender its certificate of organization;

(13) Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the limited liability company is organized;

(14) Become a member of a general partnership, limited partnership, joint venture or similar association, or other limited liability company; and

(15) Render a professional service within or without this state.

Source: Laws 1993, LB 121, § 3; Laws 1997, LB 631, § 1; Laws 2006, LB 647, § 6.

21-2604 Name.

(1) The words limited liability company, ltd. liability company, or ltd. liability co., or the abbreviation L.L.C. or LLC, shall be the last words of the name of every limited liability company, and the limited liability company name may not:

(a) Contain a word or phrase which indicates or implies that it is organized for a purpose other than one or more of the purposes contained in its articles of organization; or

(b) Be the same as or deceptively similar to the name of a limited liability company or corporation existing under the laws of this state or a foreign limited liability company or corporation authorized to transact business in this state or a name the exclusive right to which is reserved in any manner provided under the laws of this state.

(2) Omission of the words or an abbreviation required by subsection (1) of this section in the use of the name of the limited liability company shall render any person who participates in the omission or who knowingly acquiesces in such omission liable for indebtedness, damage, or liability caused by the omission.

(3) Identification as a limited liability company in the manner required by subsection (1) of this section shall appear at the end of the name of the limited

liability company on all correspondence, stationery, checks, invoices, and documents executed by the limited liability company.

Source: Laws 1993, LB 121, § 4; Laws 1997, LB 631, § 2.

21-2604.01 Reservation of name.

(1) The exclusive right to the use of a name may be reserved by:

(a) Any person intending to organize a limited liability company under the Limited Liability Company Act and to adopt that name;

(b) Any domestic limited liability company or any foreign limited liability company registered in this state which, in either case, intends to adopt that name;

(c) Any foreign limited liability company intending to register in this state and currently using or intending to adopt that name; and

(d) Any person intending to organize a foreign limited liability company and intending to have it registered in this state and adopt that name.

(2) The reservation shall be made by filing with the Secretary of State an application, executed by the applicant, to reserve a specified name. If the Secretary of State finds that the name is available for use by a domestic or foreign limited liability company, he or she shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days. Such reservation may be renewed or canceled by filing a notice of such fact on forms prescribed by the Secretary of State. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the Secretary of State a notice of the transfer executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

(3) A fee as set forth in section 21-2634 shall be paid at the time of the initial reservation of any name, at the time of the renewal of any such reservation, and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

Source: Laws 1997, LB 44, § 8.

21-2605 Formation.

One or more persons may form a limited liability company by executing and delivering articles of organization in duplicate to the Secretary of State.

Source: Laws 1993, LB 121, § 5; Laws 1994, LB 884, § 27; Laws 1997, LB 631, § 3.

21-2606 Articles of organization.

(1) The articles of organization of a limited liability company shall set forth:

(a) The name of the limited liability company;

(b) The purpose for which the limited liability company is organized but, if the limited liability company provides a professional service, the articles of organization shall contain a statement of the profession to be practiced by the limited liability company;

(c) The address of its principal place of business in this state and the name and address of its registered agent in this state;

(d) The total amount of cash contributed to stated capital and a description and agreed value of property other than cash contributed;

(e) The total additional contributions agreed to be made by all members and the times at which or events upon the happening of which the contributions will be made;

(f) The right, if given, of the members to admit additional members and the terms and conditions of the admission; and

(g) If the limited liability company is to be managed by one or more managers, the names and addresses of the persons who will serve as managers until the successor is elected, or if the management of a limited liability company is reserved to the one or more classes of members, the names and addresses of such members.

(2) The articles of organization of a limited liability company may set forth:

(a) The period of its duration, which may be perpetual. If the articles of organization do not state a period of duration, the limited liability company shall have perpetual existence; and

(b) Any other provision not inconsistent with law which the members elect to set out in the articles of organization for the regulation of the internal affairs of the limited liability company, including any provisions which are required or permitted to be set out in the operating agreement of the limited liability company.

(3) It shall not be necessary to set out in the articles of organization any of the powers enumerated in the Limited Liability Company Act.

Source: Laws 1993, LB 121, § 6; Laws 1994, LB 884, § 28; Laws 1997, LB 631, § 4; Laws 2006, LB 647, § 7.

21-2607 Filing of articles of organization and current registration certificate.

(1) Duplicate originals of the articles of organization of a limited liability company shall be delivered to the Secretary of State along with the filing fees required by section 21-2634. If the limited liability company is organized to render a professional service, a current registration certificate as provided in sections 21-2631 to 21-2632 shall be delivered to the Secretary of State with such articles of organization and fees. If the Secretary of State finds that the articles of organization conform to law and, if applicable, a current registration certificate has been filed, the Secretary of State shall:

(a) Endorse on each of the duplicate originals the word filed and the month, day, and year of the filing thereof;

(b) File one of the duplicate originals and any registration certificate, if applicable, in his or her office; and

(c) Issue a certificate of organization to which he or she shall affix the other duplicate original.

(2) The certificate of organization, together with a duplicate original of the articles of organization affixed to it by the Secretary of State, shall be returned to the principal office of the limited liability company or to its representative.

Source: Laws 1993, LB 121, § 7; Laws 2004, LB 16, § 3; Laws 2006, LB 647, § 8.

21-2608 Effect of issuance of certificate of organization.

(1) Upon the issuance of the certificate of organization, the limited liability company shall be considered organized unless a delayed effective date is stated in the articles of organization. The certificate of organization shall be conclusive evidence that all conditions precedent required to be performed by the members have been complied with and that the limited liability company has been legally organized pursuant to the Limited Liability Company Act except as against this state in a proceeding to cancel or revoke the certificate of organization or for involuntary dissolution of the limited liability company.

(2) A limited liability company shall not transact business or incur indebtedness, except business or indebtedness that is incidental to its organization or to obtaining subscriptions for or payment of contributions, until the Secretary of State has issued a certificate of organization or, if later, any delayed effective date of organization stated in the articles of organization.

Source: Laws 1993, LB 121, § 8; Laws 1997, LB 631, § 5.

21-2609 Registered office and registered agent to be maintained.

A limited liability company shall have and continuously maintain in this state:

(1) A registered office which may but need not be the same as its place of business; and

(2) A registered agent having a business office identical with the registered office, which agent may be an individual resident in this state, a domestic corporation, or a foreign corporation authorized to transact business in this state.

Source: Laws 1993, LB 121, § 9.

21-2610 Change of registered office or registered agent.

(1) A limited liability company, whether foreign or domestic, may change its registered office or registered agent upon filing with the Secretary of State a statement setting forth:

(a) The name of the limited liability company;

(b) The address of its current registered office;

(c) If the address of its registered office is to be changed, the new address;

(d) The name of its current registered agent;

(e) If its registered agent is to be changed, the name of the successor registered agent;

(f) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and

(g) That the change was authorized by an affirmative vote of a majority in interest of the members of the limited liability company or in any other manner authorized by the articles of organization.

(2) The statement shall be executed by an authorized representative of the limited liability company and delivered to the Secretary of State. If the Secretary of State finds that the statement conforms to the requirements of this section, he or she shall file the statement in his or her office, and upon filing, the change of address of the registered office or the appointment of a new registered agent shall be effective.

(3) A registered agent may resign as registered agent of a limited liability company upon filing a written notice, executed in duplicate, with the Secretary of State who shall mail a copy thereof to the limited liability company at its place of business if known to the Secretary of State, otherwise at its registered office. The appointment of the registered agent shall terminate upon the expiration of thirty days after receipt of notice by the Secretary of State.

(4) If a registered agent changes the street address for his or her business office, he or she may change the street address of the registered office of any limited liability company for which he or she is the registered agent by notifying the limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (1) of this section and recites that the limited liability company has been notified of the change.

Source: Laws 1993, LB 121, § 10; Laws 1994, LB 884, § 29; Laws 1997, LB 631, § 6; Laws 2006, LB 647, § 9.

21-2611 Failure to maintain registered agent or registered office or pay annual fee.

If a limited liability company has failed for ninety days to appoint and maintain a registered agent in this state, has failed for ninety days after change of its registered office or registered agent to file with the Secretary of State a statement of the change, or has failed to pay any fee required by section 21-2634, it shall be deemed to be transacting business within this state without authority and to have forfeited any franchises, rights, or privileges acquired under the laws of this state. The Secretary of State shall mail a notice of failure to comply to the limited liability company at its registered office by certified mail. Unless the limited liability company comes into compliance within thirty days after the delivery of notice, the limited liability company shall be deemed to be defunct and to have forfeited its certificate of organization. A defunct limited liability company may at any time within one year after the forfeiture of its certificate be revived and reinstated by filing any necessary documents, paying any fees, and paying an additional fee of one hundred dollars. A revived and reinstated limited liability company shall have the same force and effect as if its existence had not been defunct.

Source: Laws 1993, LB 121, § 11; Laws 1994, LB 884, § 30.

21-2612 Liability of members and managers.

(1) The members and managers of a limited liability company shall not be liable under a judgment, decree, or order of a court or in any other manner for a debt, obligation, or liability of the limited liability company. Except as otherwise specifically set forth in the Limited Liability Company Act, no member, manager, employee, or agent of a limited liability company shall be personally liable under any judgment, decree, or order of any court, agency, or other tribunal in this or any other state, or on any other basis, for any debt, obligation, or liability of the limited liability company.

(2) The members of a limited liability company, including members acting as managers, shall be liable in the same manner as a corporate officer for unpaid taxes imposed upon a limited liability company when management is reserved to the members. If management is not reserved to the members, the managers

of a limited liability company shall be liable in the same manner as a corporate officer for unpaid taxes imposed upon the limited liability company.

Source: Laws 1993, LB 121, § 12; Laws 1994, LB 884, § 31; Laws 1997, LB 631, § 7; Laws 2005, LB 216, § 1.

21-2613 Service of process.

(1) The registered agent appointed by a limited liability company shall be an agent of the limited liability company upon whom any process, notice, or demand required or permitted by law to be served may be served.

(2) If a limited liability company fails to appoint or maintain a registered agent in this state or if the registered agent cannot with reasonable diligence be found at the registered office, the limited liability company shall be served by registered or certified mail, return receipt requested, addressed to the limited liability company at its principal office. Service shall be perfected under this subsection at the earliest of:

(a) The date the limited liability company receives the mail;

(b) The date shown on the return receipt, if signed on behalf of the limited liability company; or

(c) Five days after its deposit in the United States mail as evidenced by the postmark, if mailed postage prepaid and correctly addressed.

(3) This section shall not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited liability company in any other manner now or hereafter permitted by law.

Source: Laws 1993, LB 121, § 13; Laws 2006, LB 647, § 10.

21-2614 Contributions to capital; stated capital, defined.

Contributions to capital by a member of a limited liability company may consist of any tangible or intangible property or benefit to the company. For purposes of the Limited Liability Company Act, stated capital shall mean the sum of initial capital contributed to a limited liability company which serves as a minimum basis for capitalization.

Source: Laws 1993, LB 121, § 14; Laws 1994, LB 884, § 32.

21-2615 Management.

Unless the articles of organization provide to the contrary, management of a limited liability company shall be vested in each member in proportion to such person's contribution to the capital of the limited liability company as adjusted from time to time to properly reflect any additional contribution or withdrawal by another member. If the articles of organization provide for the management of the limited liability company by one or more managers, the managers shall be elected by one or more classes of members in a manner provided in the operating agreement. The managers shall also hold the offices and have the responsibilities accorded to them by such members and as set out in the operating agreement.

Source: Laws 1993, LB 121, § 15; Laws 1994, LB 884, § 33; Laws 1997, LB 631, § 8.

21-2616 Contracting debts.

Debt shall not be contracted and liability shall not be incurred by or on behalf of a limited liability company except by a manager, if management of the limited liability company has been vested in a manager, or by a member of one or more classes, if management of the limited liability company is retained by a member of such class.

Source: Laws 1993, LB 121, § 16; Laws 1997, LB 631, § 9.

21-2617 Property.

Real and personal property owned or purchased by a limited liability company shall be held and owned and conveyance shall be made in the name of the limited liability company. Instruments and documents providing for the acquisition, mortgage, or disposition of property of the limited liability company shall be valid and binding upon the limited liability company if executed by a manager of a limited liability company having a manager or, if management has been retained by one or more classes of members, by a member of any such class.

Source: Laws 1993, LB 121, § 17; Laws 1997, LB 631, § 10.

21-2617.01 Biennial report; contents; dissolution of company; revocation of certificate; Secretary of State; powers; procedure; revival or restoration; when.

(1) A limited liability company and a foreign limited liability company authorized to transact business in the state shall file a biennial report in the office of the Secretary of State which contains:

(a) The name of the limited liability company and the state or other jurisdiction under whose laws the limited liability company or foreign limited liability company is formed; and

(b) The street address of the limited liability company's principal place of business in this state or, if the limited liability company does not have an office in this state, the name and street address of the company's agent for service of process.

(2) Commencing on January 1, 2007, a biennial report shall be filed between January 1 and April 1 of each odd-numbered year following the year in which a limited liability company files articles of organization or a foreign limited liability company becomes authorized to transact business in this state. A correction or amendment to a biennial report may be filed at any time.

(3) The Secretary of State may dissolve a limited liability company or revoke the certificate of authority to transact business of a foreign limited liability company that fails to file a biennial report when due or pay the required filing fee provided in section 21-2634. To do so, the Secretary of State shall provide the company at least sixty days' written notice of intent to dissolve or revoke. The notice shall be mailed to the company at its principal office or the office of the agent for service of process as set forth in the articles of organization, biennial report, or other filing designating the agent for service of process, whichever was most recently filed. The notice shall specify the biennial report that has not been filed, the fee that has not been paid, and the effective date of the dissolution or revocation. The dissolution or revocation is not effective if the biennial report is filed and the fee is paid before the effective date of the dissolution or revocation.

(4) Revival or restoration of the authority of a company dissolved or whose certificate of authority has been revoked pursuant to this section shall be accomplished as provided in section 21-2611, and upon completion of such requirements for revival or restoration, the revival or restoration shall relate back to the date of dissolution or revocation as if such dissolution or revocation had not occurred.

Source: Laws 2006, LB 647, § 11.

21-2618 Division of profits.

A limited liability company may divide the profits of its business and distribute the profits to the members of the limited liability company upon the basis stipulated in the operating agreement if, after distribution is made, the aggregate fair market value of the assets of the limited liability company is in excess of all liabilities of the limited liability company other than liabilities to members on account of their contributions to capital.

Source: Laws 1993, LB 121, § 18; Laws 1997, LB 631, § 11.

21-2619 Withdrawal or reduction of members' contributions to capital.

(1) A member shall not receive out of limited liability company property any part of such member's contributions to capital until:

(a) All liabilities of the limited liability company other than liabilities to members on account of their contributions to capital have been paid or there remains property of the limited liability company with an aggregate fair market value sufficient to pay them;

(b) The members constituting at least a majority in interest or such greater interest as specified in the articles of organization have consented unless the return of the contributions to capital may be rightfully obtained pursuant to section 21-2625; and

(c) The articles of organization are canceled or amended to set out any withdrawal or reduction of stated capital.

(2) In the absence of a statement in the articles of organization to the contrary or the consent of all members of the limited liability company, a member, irrespective of the nature of such member's contributions to capital, shall have no right to demand or receive specific property in satisfaction of a withdrawal or reduction of such member's capital accounts.

(3) A member of the limited liability company who has withdrawn from membership, but whose capital account has not been liquidated pursuant to the articles of organization or the operating agreement, shall have the status of a transferee as provided in section 21-2621 unless otherwise provided in the operating agreement.

Source: Laws 1993, LB 121, § 19; Laws 1994, LB 884, § 34; Laws 1996, LB 681, § 184; Laws 1997, LB 631, § 12.

21-2620 Liability of member to company.

(1) A member shall be liable to the limited liability company:

(a) For the difference between such member's contributions to stated capital as actually made and as stated in the articles of organization as having been made; and

(b) For any unpaid contribution to stated capital which such member agreed in the articles of organization to make in the future at the time and on the conditions stated in the articles of organization.

(2) A member holds as trustee for the limited liability company:

(a) Specific property stated in the articles of organization as contributed by such member but which was not contributed or which has been wrongfully or erroneously returned; and

(b) Money or other property wrongfully paid or conveyed to such member on account of such member's contributions to capital.

(3) The liabilities of a member as set out in this section may be waived or compromised only by the consent of all members. A waiver or compromise shall not affect the right of a creditor of the limited liability company who extended credit or whose claim arose after the filing and before a cancellation or amendment of the articles of organization to enforce the liabilities.

(4) When a contributor has rightfully received the return in whole or in part of such person's contributions to capital, the contributor shall be liable to the limited liability company for any sum, not in excess of the amount returned with interest, necessary to discharge the liability to all creditors of the limited liability company who extended credit or whose claims arose before the return for a period of three years from the date of distributions.

Source: Laws 1993, LB 121, § 20; Laws 1994, LB 884, § 35; Laws 1997, LB 631, § 13.

21-2621 Interest in company; transferability of interest; admission of additional members.

The interest of a member in a limited liability company constitutes the personal estate of the member and may be transferred or assigned as provided in the articles of organization or operating agreement. Unless otherwise provided in the articles of organization or the operating agreement, if a majority in interest of the members of the limited liability company other than the member proposing to dispose of such member's interest do not approve of the proposed transfer or assignment of part or all of the member's interest to a nonmember by written consent, the nonmember transferee of the member's interest shall have no right to participate in the management of the business and affairs of the limited liability company or to become a member, and the nonmember transferee shall only be entitled to receive the share of profits or other compensation by way of income and the return of capital to which the transferring member would otherwise be entitled. Unless otherwise provided in the articles of organization or the operating agreement, additional members shall be admitted only upon an affirmative vote of a majority in interest of the current members of the limited liability company.

Source: Laws 1993, LB 121, § 21; Laws 1994, LB 884, § 36; Laws 1996, LB 681, § 185; Laws 1997, LB 631, § 14.

21-2622 Dissolution.

(1) A limited liability company shall be dissolved only upon the occurrence of the following:

(a) The expiration of the period fixed, if any, for the duration of the limited liability company;

(b) The unanimous written agreement of all members;

(c) Any other event described in the articles of organization; or

(d) The judicial dissolution of the limited liability company.

(2) On application by or for any member, the district court may decree the dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business of such limited liability company in conformity with its articles of organization or its operating agreement.

Source: Laws 1993, LB 121, § 22; Laws 1994, LB 884, § 37; Laws 1996, LB 681, § 186; Laws 1997, LB 631, § 15.

21-2623 Filing of statement of intent to dissolve.

(1) Following the occurrence of any of the events specified in section 21-2622 effecting the dissolution of the limited liability company, the limited liability company shall execute a statement of intent to dissolve in such form as prescribed by the Secretary of State.

(2) Duplicate originals of the statement of intent to dissolve shall be delivered to the Secretary of State. If the Secretary of State finds that the statement conforms to the requirements of this section and all fees and taxes have been paid, he or she shall:

(a) Endorse on each of such duplicate originals the word filed and the month, day, and year of the filing thereof;

(b) File one of the duplicate originals in his or her office; and

(c) Return the other duplicate original to the limited liability company or its representative.

Source: Laws 1993, LB 121, § 23.

21-2624 Effect of filing of dissolving statement.

Upon the filing by the Secretary of State of a statement of intent to dissolve, the limited liability company shall cease to carry on its business except as may be necessary for the winding up of its business. The separate existence of the limited liability company shall continue until a certificate of dissolution has been issued by the Secretary of State or until a decree dissolving the limited liability company has been entered by a court of competent jurisdiction.

Source: Laws 1993, LB 121, § 24.

21-2625 Distribution of assets upon dissolution.

(1) In settling accounts after dissolution, the liabilities of the limited liability company shall be entitled to payment in the following order:

(a) Liabilities to creditors other than members of the limited liability company on account of their contributions to capital, in the order of priority provided by law;

(b) Liabilities to members of the limited liability company in respect of their share of the profits and other compensation by way of income on their contributions; and

(c) Liabilities to members of the limited liability company in respect of their contributions to capital.

(2) Subject to any statement in the operating agreement, members shall share in the limited liability company assets in respect to their claims for contributions to capital and in respect to their claims for profits or for compensation by way of income on their contributions to capital, respectively, in proportion to the respective amounts of the claim.

Source: Laws 1993, LB 121, § 25.

21-2626 Articles of dissolution.

When all debts, liabilities, and obligations have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets have been distributed to the members, articles of dissolution shall be executed in duplicate and verified by the person signing the statement. The statement shall set forth:

(1) The name of the limited liability company;

(2) That the Secretary of State has filed a statement of intent to dissolve the company and the date on which the statement was filed;

(3) That all debts, liabilities, and obligations have been paid and discharged or that adequate provision has been made therefor;

(4) That all the remaining property and assets have been distributed to the members in accordance with their respective rights and interests; and

(5) That there are no suits pending against the limited liability company in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

Source: Laws 1993, LB 121, § 26.

21-2627 Filing of articles of dissolution; issuance of certificate of dissolution.

(1) Duplicate originals of the articles of dissolution of a limited liability company shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of dissolution conform to the requirements of section 21-2626 and all fees and taxes have been paid, he or she shall:

(a) Endorse on each of such duplicate originals the word filed and the month, day, and year of the filing thereof;

(b) File one of the duplicate originals in his or her office; and

(c) Issue a certificate of dissolution to which he or she shall affix the other duplicate original.

(2) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto, shall be returned to the representative of the dissolved limited liability company. Upon the issuance of the certificate of dissolution, the existence of the limited liability company shall cease except for the purpose of suits, other proceedings, and appropriate action as provided in the Limited Liability Company Act. The manager at the time of dissolution shall thereafter be trustee for the members and creditors of the dissolved limited liability company and as such shall have authority to distribute any property of the limited liability company discovered after dissolution, convey real estate, and take such other action as may be necessary on behalf of and in the name of such dissolved limited liability company.

(3) The certificate of organization of a limited liability company shall be canceled by the Secretary of State upon issuance of the certificate of dissolution.

Source: Laws 1993, LB 121, § 27.

21-2628 Amendment of articles of organization.

(1) The articles of organization of a limited liability company shall be amended when:

(a) There is a change in the name of the limited liability company;

(b) There is a change in the purpose for which the limited liability company is organized;

(c) There is a change in stated capital that reduces the stated capital below the amount in the articles of organization;

(d) There is a change in the time, if any, stated in the articles of organization for the dissolution of the limited liability company;

(e) A time is fixed for the dissolution of the limited liability company if no time is specified in the articles of organization; or

(f) The members desire to make a change in any other statement in the articles of organization so the articles will accurately represent the agreement between the members.

(2) The form for evidencing an amendment to the articles of organization of a limited liability company shall be prescribed by the Secretary of State and shall contain such terms and provisions as determined by the Secretary of State. The articles of organization may be amended upon the affirmative vote of a majority in interest of the members or in such other manner as is provided in the articles of organization. The amendment shall be executed by an authorized representative of the limited liability company. Duplicate originals of the amendment shall be forwarded to the Secretary of State for filing with the filing fee.

Source: Laws 1993, LB 121, § 28; Laws 1994, LB 884, § 38; Laws 1996, LB 681, § 187; Laws 1997, LB 631, § 16.

21-2629 Parties to actions.

A member of a limited liability company shall not be a proper party to proceedings by or against a limited liability company except when the object is to enforce a member's right against or liability to the limited liability company.

Source: Laws 1993, LB 121, § 29.

21-2630 Waiver of notice.

When notice is required to be given to a member or manager under the Limited Liability Company Act, the articles of organization, or the operating agreement, a waiver in writing signed by the person or persons entitled to the notice, whether before or after the time stated in the notice, shall be the equivalent to the giving of notice.

Source: Laws 1993, LB 121, § 30.

21-2631 Professional service; license and registration certificate required; filing.

(1) Each member, manager, employee, or agent of a limited liability company organized under the Limited Liability Company Act who renders a professional service shall hold a valid license or otherwise be duly authorized to render that professional service under the law of this state if such person renders a professional service within this state or under the law of the state, territory, or other jurisdiction in which such person renders the professional service.

(2) Before rendering a professional service, the limited liability company shall (a)(i) file with the Secretary of State a registration certificate issued to the limited liability company by the regulatory body of the particular profession for which the limited liability company is organized to do business, which certificate sets forth the name and residence address of every member as of the last day of the month preceding the filing, and (ii) certify that all members, managers, and professional employees who are required by law to do so are duly licensed or otherwise authorized to perform the professional service for which the limited liability company is organized or (b) comply with and qualify under the procedures set forth in subsection (2) of section 21-2631.01.

(3) The registration certificate requirements of this section and sections 21-2631.01 to 21-2632 shall apply to both domestic and foreign limited liability companies.

Source: Laws 1993, LB 121, § 31; Laws 1994, LB 884, § 39; Laws 1996, LB 681, § 188; Laws 1997, LB 631, § 17; Laws 2004, LB 16, § 4; Laws 2006, LB 647, § 13.

21-2631.01 Registration certificate; application; contents; issuance; fees; display; Secretary of State; access electronic licensing records; verification; suspension.

(1) An application for issuance of a registration certificate shall be made by the limited liability company to the regulatory body in writing and shall contain the names of all members, managers, and professional employees of the limited liability company, the street address at which the applicant proposes to perform a professional service, and such other information as may be required by the regulatory body. If it appears to the regulatory body that each member, manager, and professional employee of the applicant required by law to be licensed is licensed or otherwise authorized to practice the profession of the applicant and that each member, manager, or professional employee required by law to be licensed is not otherwise disqualified from performing the professional service of the applicant, such regulatory body shall certify in duplicate upon a form bearing its date of issuance and prescribed by such regulatory body that the proposed or existing limited liability company complies with the provisions of the Limited Liability Company Act and of the applicable rules and regulations of the regulatory body. Each applicant for such registration certificate shall pay the regulatory body a fee of twenty-five dollars for the issuance of the certificate.

One copy of such certificate shall be prominently displayed to public view upon the premises of the principal place of business of the limited liability company, and one copy shall be filed with the Secretary of State who shall charge a fee of twenty-five dollars for filing the same. The certificate shall be filed in the office of the Secretary of State with the articles of organization. A registration certificate bearing an issuance date more than twelve months old shall not be eligible for filing with the Secretary of State.

(2) When licensing records of regulating boards are electronically accessible to the Secretary of State, the Secretary of State shall access the records. The access of the records shall be made in lieu of the certificate of registration or registration certificate being prepared and issued by the regulating board. The limited liability company shall file with the Secretary of State an application setting forth the names of all members, managers, and professional employees of such limited liability company who are required by law to be licensed or otherwise authorized to practice the professional service for which the limited liability company is organized as of the last day of the month preceding the date of application and shall file with the Secretary of State an annual update thereafter. The application shall be completed on a form prescribed by the Secretary of State and shall contain such other information as the Secretary of State may require. The application shall be accompanied by a license verification fee of fifty dollars.

The Secretary of State shall verify that all members, managers, and professional employees who are required by law to do so are duly licensed or otherwise legally authorized to render the same professional service or ancillary service as those which the limited liability company renders through electronic accessing of the regulating board's records. If any member, manager, or professional employee is not licensed or otherwise legally authorized to perform the professional service that the limited liability company was organized to render, the limited liability company shall be suspended. The suspension shall remain in effect and a biennial report shall not be filed in the office of the Secretary of State until the limited liability company attests in writing that all members, managers, or professional employees are duly licensed or otherwise legally authorized to render the appropriate service and that information is verified by the Secretary of State or all unlicensed or unauthorized members, managers, or professional employees are no longer members, managers, or professional employees of the limited liability company.

Source: Laws 1994, LB 884, § 40; Laws 1996, LB 681, § 189; Laws 2006, LB 647, § 14.

21-2631.02 Registration certificate; expiration; filing; not transferable or assignable.

Each registration certificate issued to a limited liability company pursuant to section 21-2631.01 shall expire by its own terms one year from the date of issuance and may not be renewed. Each limited liability company shall annually apply (1) to its regulatory body for a registration certificate in the manner provided in subsection (1) of section 21-2631.01 or (2) to the Secretary of State pursuant to subsection (2) of section 21-2631.01 if the records of the regulating body are electronically accessible to the Secretary of State. A certificate or application shall be filed annually with the Secretary of State within thirty days before the expiration date of the last certificate or application on file in the office of the Secretary of State or the limited liability company shall be suspended. Registration certificates shall not be transferable or assignable.

Source: Laws 1994, LB 884, § 41; Laws 1996, LB 681, § 190.

21-2631.03 Registration certificate; suspension or revocation; procedures.

A regulatory body may, upon a form prescribed by it, suspend or revoke any registration certificate issued to any limited liability company pursuant to

subsection (1) of section 21-2631.01 upon the suspension or revocation of the license or other authorization to perform professional service of any member, manager, or professional employee of a holder of a certificate. Notice of such revocation shall be provided the limited liability company affected by sending by certified or registered mail a certified copy of such revocation to the limited liability company at its principal place of business set forth in the registration certificate so revoked. At the same time, the regulatory body shall forward by regular mail a certified copy of such revocation to the Secretary of State who shall remove the suspended or revoked registration certificate from his or her files and deliver it to the regulatory body.

Source: Laws 1994, LB 884, § 42; Laws 1996, LB 681, § 191.

21-2632 Professional service; regulation of practice.

Nothing in the Limited Liability Company Act is intended to restrict or limit in any manner the authority and duty of any regulatory body licensing professionals within the state to license such individuals rendering a professional service or to regulate the practice of any profession that is within the jurisdiction of the regulatory body licensing such professionals within the state notwithstanding that the person is a member, manager, employee, or agent of a limited liability company and rendering a professional service or engaging in the practice of the profession through a limited liability company.

Source: Laws 1993, LB 121, § 32; Laws 1994, LB 884, § 43; Laws 2006, LB 647, § 15.

21-2632.01 Professional limited liability company; limitation of services.

A professional limited liability company shall render only one type of professional service and such services as may be ancillary thereto and shall not engage in any other profession. No professional limited liability company organized under the Limited Liability Company Act may render a professional service except through its members, managers, and professional employees who are duly licensed or otherwise legally authorized to render such professional service within this state. This section shall not be interpreted to include in the term professional employee, as used in the act, clerks, secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering a professional service to the public for which a license or other legal authorization is required.

Source: Laws 2006, LB 647, § 12.

21-2633 Taxation.

A limited liability company shall be classified for state income tax purposes in the same manner as it is classified for federal income tax purposes.

Source: Laws 1993, LB 121, § 33; Laws 1997, LB 631, § 18.

Cross References

Taxation of members, credit, see section 77-2734.01.

21-2634 Fees.

The filing fee for all filings pursuant to the Limited Liability Company Act, including amendments, shall be ten dollars plus the recording fees set forth in subdivision (4) of section 33-101, except that the filing fee for filing a certificate

of organization and for filing an application for a certificate of authority as a foreign limited liability company shall be one hundred dollars plus such recording fees and ten dollars for a certificate. There shall be no recording fee collected for the filing of a biennial report or any corrections or amendments thereto. A fee of one dollar per page plus ten dollars per certificate shall be paid for a certified copy of any document on file pursuant to the act. The fees for filings pursuant to the act shall be paid to the Secretary of State and remitted by him or her to the State Treasurer. The State Treasurer shall credit two-thirds of the fees to the General Fund and one-third of the fees to the Corporation Cash Fund.

Source: Laws 1993, LB 121, § 34; Laws 1994, LB 884, § 44; Laws 2006, LB 647, § 16.

21-2635 Unauthorized assumption of powers.

All persons who assume to act as a limited liability company without authority to do so shall be jointly and severally liable for all debts and liabilities of the company.

Source: Laws 1993, LB 121, § 35.

21-2636 Legislative intent; recognition outside the state.

It is the intent of the Legislature that the legal existence of limited liability companies organized under the Limited Liability Company Act be recognized outside the boundaries of this state and that, subject to any reasonable requirement of registration, a domestic limited liability company transacting business outside this state be granted the protection of full faith and credit under the Constitution of the United States.

Source: Laws 1993, LB 121, § 36.

21-2637 Foreign limited liability company; law governing; rights.

The law of the state or other jurisdiction under which a foreign limited liability company is formed shall govern its formation and internal affairs and the liability of its members and managers. A foreign limited liability company shall not be denied a certificate of authority by reason of any difference between those laws and the laws of this state. A foreign limited liability company holding a valid certificate of authority in this state shall have no greater rights and privileges than a domestic limited liability company. The certificate of authority shall not be deemed to authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in this state.

Source: Laws 1993, LB 121, § 37.

21-2638 Foreign limited liability company; certificate of authority; application.

Before doing business in this state, a foreign limited liability company shall obtain a certificate of authority from the Secretary of State. In order to obtain a certificate of authority, a foreign limited liability company shall submit to the Secretary of State, together with payment of the fee required by the Limited Liability Company Act, an original executed by a member, together with a

duplicate original, of an application for a certificate of authority as a foreign limited liability company, setting forth:

(1) The name of the foreign limited liability company;

(2) The state or other jurisdiction or country where organized, the date of its organization, and a statement issued by an appropriate authority in that jurisdiction that the foreign limited liability company exists in good standing under the laws of the jurisdiction of its organization;

(3) The nature of the business or purposes to be conducted or promoted in this state;

(4) The address of the registered office and the name and address of the resident agent for service of process required to be maintained by the act; and

(5) Such additional information as may be necessary or appropriate in order to enable the Secretary of State to determine whether such foreign limited liability company is entitled to a certificate of authority to transact business in this state and to determine and assess the fees and taxes prescribed by the laws of this state.

Source: Laws 1993, LB 121, § 38.

21-2639 Foreign limited liability company; filing of certificate of authority and current registration certificate.

The original and a duplicate original of the application of a foreign limited liability company for a certificate of authority shall be delivered to the Secretary of State along with the filing fees required by section 21-2634. If the foreign limited liability company is organized to render a professional service, a current registration certificate as provided in sections 21-2631 to 21-2632 shall be delivered to the Secretary of State with such application and fees. If the Secretary of State finds that the application conforms to law and, if applicable, a current registration certificate has been filed, the Secretary of State shall:

(1) Endorse on each of such documents the word filed and the month, day, and year of the filing thereof;

(2) File in his or her office the original of the application and any registration certificate, if applicable; and

(3) Issue a certificate of authority to transact business in this state to which he or she shall affix the duplicate original of the application.

The certificate of authority, together with the duplicate original of the application affixed thereto by the Secretary of State, shall be returned to the principal office of the foreign limited liability company or its representative

Source: Laws 1993, LB 121, § 39; Laws 2004, LB 16, § 5; Laws 2006, LB 647, § 17.

21-2640 Foreign limited liability company; name.

No certificate of authority shall be issued to a foreign limited liability company unless the name of such company satisfies the requirements of subsection (1) of section 21-2604. If the name under which a foreign limited liability company is registered in the jurisdiction of its formation does not satisfy the requirements of such subsection, to obtain or maintain a certificate

of authority the foreign limited liability company may use a designated name that is available and which satisfies the requirements of such subsection.

Source: Laws 1993, LB 121, § 40; Laws 1997, LB 631, § 19.

21-2641 Foreign limited liability company; application for certificate of authority; amendments.

(1) The application for a certificate of authority of a foreign limited liability company shall be amended by filing articles of amendment with the Secretary of State signed by a person with authority to do so under the laws of this state or other jurisdiction of its organization. The articles of amendment shall set forth:

(a) The name of the foreign limited liability company;

(b) The date the original application for a certificate of authority was filed; and

(c) The amendment to the application for a certificate of authority.

(2) The application for a certificate of authority may be amended in any way, except that the application for a certificate of authority as amended may contain only provisions that may be lawfully contained in an application for registration at the time of making the amendment.

Source: Laws 1993, LB 121, § 41.

21-2642 Foreign limited liability company; withdrawal.

The original and a duplicate original of an application for withdrawal of a foreign limited liability company shall be delivered to the Secretary of State. If the Secretary of State finds that such application conforms to the provisions of the Limited Liability Company Act, he or she shall, when all fees and taxes have been paid:

(1) Endorse on the original and the duplicate original the word filed and the month, day, and year of the filing thereof;

(2) File the original in his or her office; and

(3) Issue a certificate of withdrawal to which he or she shall affix the duplicate original.

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the Secretary of State, shall be returned to the foreign limited liability company or its representative. Upon the issuance of such certificate of withdrawal, the authority of the foreign limited liability company to transact business in this state shall cease.

Source: Laws 1993, LB 121, § 42.

21-2643 Foreign limited liability company; transaction of business without certificate of authority; effect.

No foreign limited liability company transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court of this state until such limited liability company has obtained a certificate of authority. No action, suit, or proceeding shall be maintained in any court of this state by any successor or assignee of such limited liability company on any right, claim, or demand arising out of the transaction of business by such limited liability company in this state until a

certificate of authority has been obtained by the foreign limited liability company which has acquired all or substantially all of its assets. A foreign limited liability company shall not be barred solely for the reason that it is or has been carrying on one or more of the activities enumerated in section 21-2644.

The failure of a foreign limited liability company to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such limited liability company and shall not prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of this state.

A foreign limited liability company which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees and taxes which would have been imposed by the laws of this state upon the foreign limited liability company had it duly applied for and received a certificate of authority to transact business in this state as required by the Limited Liability Company Act plus all penalties imposed by the laws of this state for failure to pay such fees and taxes. The Attorney General shall bring proceedings to recover all amounts due this state under this section.

Source: Laws 1993, LB 121, § 43.

21-2644 Foreign limited liability company; activities not considered transacting business in this state.

(1) Without excluding activities which do not constitute transacting business in this state, a foreign limited liability company shall not be considered to be transacting business in this state, for the purpose of being required to secure a certificate of authority pursuant to section 21-2638, by reason of carrying on in this state any one or more of the following activities:

(a) Maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(b) Holding meetings of its directors or members or carrying on other activities concerning its internal affairs;

(c) Maintaining bank accounts;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of its securities or appointing and maintaining trustees or depositaries with relation to its securities;

(e) Effecting sales through independent contractors;

(f) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, when such orders require acceptance without this state before becoming binding contracts;

(g) Creating, as a borrower or lender, or acquiring indebtedness, mortgages, or other security interests in real or personal property;

(h) Securing, collecting, or servicing debts or enforcing any rights in property securing the same;

(i) Transacting any business in interstate commerce; or

(j) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

(2) A foreign limited liability company shall not be considered to be transacting business solely because it:

(a) Owns a controlling interest in a corporation or a foreign corporation that transacts business;

(b) Is a limited partner of a limited partnership or foreign limited partnership that is transacting business; or

(c) Is a member or manager of a limited liability company or foreign limited liability company that is transacting business.

(3) The specification of activities which do not constitute transacting business for purposes of the Limited Liability Company Act shall establish a standard for those activities in determining whether a foreign limited liability company is exercising its franchise or doing business in this state in a business capacity except for activities which may subject a limited liability company to service of process or to property taxes assessed against any property or interest therein.

Source: Laws 1993, LB 121, § 44.

21-2645 Action by Attorney General.

The Attorney General may maintain an action to restrain a foreign limited liability company from transacting business in this state in violation of the Limited Liability Company Act.

Source: Laws 1993, LB 121, § 45.

21-2646 Act; applicability to attorneys at law.

The provisions of the Limited Liability Company Act shall be applicable to attorneys at law only to the extent and under such terms and conditions as the Nebraska Supreme Court determines to be necessary and appropriate. Articles of organization of limited liability companies organized to practice law shall contain such provisions as may be appropriate to comply with applicable rules of the court.

Source: Laws 1994, LB 884, § 45.

21-2647 Merger or consolidation; authorized.

Any one or more limited liability companies may merge or consolidate with or into any one or more limited liability companies, general partnerships, limited partnerships, or corporations, and any one or more general partnerships, limited partnerships, or corporations may merge or consolidate with or into any one or more limited liability companies.

Source: Laws 1994, LB 884, § 46; Laws 1997, LB 631, § 20.

21-2648 Merger or consolidation; written plan; contents.

(1) Each constituent entity shall enter into a written plan of merger or consolidation which shall be approved in accordance with section 21-2649.

(2) The plan of merger or consolidation shall set forth:

(a) The name of each limited liability company, corporation, general partnership, or limited partnership which is a constituent entity in the merger or consolidation and the name of the surviving entity into which each other constituent entity proposes to merge or the new entity into which each constituent entity proposes to consolidate;

(b) The terms and conditions of the proposed merger or consolidation;

(c) The manner and basis of converting the interests in each limited liability company, the shares of stock or other interests in each corporation, and the interests in each general partnership or limited partnership that is a constituent entity in the merger or consolidation into interests, shares, or other securities or obligations, as the case may be, of the surviving entity or the new entity, or of any other limited liability company, corporation, general partnership, limited partnership, or other entity, or, in whole or in part, into cash or other property;

(d) In the case of a merger, such amendments to the articles of organization of a limited liability company, articles or certificate of incorporation of a corporation, or certificate of limited partnership of a limited partnership, as the case may be, of the surviving entity as are desired to be effected by the merger, or that no such changes are desired;

(e) In the case of a consolidation, all of the statements required to be set forth in articles of organization of any new entity that is a limited liability company, articles or certificate of incorporation of any new entity that is a corporation, or certificate of limited partnership of any new entity that is a limited partnership, as the case may be; and

(f) Such other provisions relating to the proposed merger or consolidation as are deemed necessary or desirable.

Source: Laws 1994, LB 884, § 47; Laws 1997, LB 631, § 21.

21-2649 Merger or consolidation; approval; abandonment.

(1)(a) A proposed plan of merger or consolidation complying with the requirements of section 21-2648 shall be approved in the manner provided by this section.

(b) A limited liability company which is a party to a proposed merger or consolidation shall have the plan of merger or consolidation authorized and approved by a majority in interest, or such greater interest as otherwise provided in the articles of organization, of the members of such limited liability company.

(c) A corporation which is a party to a proposed merger or consolidation shall have the plan of merger or consolidation authorized and approved in the manner and by the vote required by the laws of this state.

(d) A partnership which is a party to a proposed merger or consolidation shall have the plan of merger authorized and approved in the manner and by the vote required by its partnership agreement and in accordance with the partnership laws of this state.

(2) After a merger or consolidation is authorized, unless the plan of merger or consolidation provides otherwise, and at any time before articles of merger or consolidation are filed, the plan of merger or consolidation may be abandoned, subject to any contractual rights, in accordance with the procedure set forth in the plan of merger or consolidation or, if none is set forth, as follows:

(a) By a majority in interest, or such greater interest as otherwise provided in the articles of organization, of the members of each limited liability company that is a constituent entity;

(b) By the vote of the board of directors of any corporation that is a constituent entity; and

(c) By the partners of any partnership that is a constituent entity in accordance with its partnership agreement and applicable partnership law.

Source: Laws 1994, LB 884, § 48; Laws 1996, LB 681, § 192; Laws 1997, LB 631, § 22.

21-2650 Merger or consolidation; filings required; when effective.

(1) After a plan of merger or consolidation is approved as provided in section 21-2649, the surviving entity or the new entity shall deliver to the Secretary of State for filing articles of merger or consolidation duly executed by each constituent entity setting forth:

(a) The name of each constituent entity;

(b) The plan of merger or consolidation;

(c) The effective date of the merger or consolidation if later than the date of filing of the articles of merger or consolidation;

(d) The name of the surviving entity or the new entity; and

(e) A statement that the plan of merger or consolidation was duly authorized and approved by each constituent entity in accordance with section 21-2649.

(2) A merger or consolidation takes effect upon the later of the effective date of the filing of the articles of merger or consolidation or the date set forth in the plan of merger or consolidation.

(3) Duplicate originals of the articles of merger or consolidation shall be delivered to the Secretary of State who, after determining that such documents appear in all respects to conform to the requirements of sections 21-2647 to 21-2652, shall file one of the duplicate originals and endorse on each duplicate original the word filed with the month, day, and year of the filing thereof and return one duplicate original to the surviving entity or the new entity or its representative.

Source: Laws 1994, LB 884, § 49.

21-2651 Merger or consolidation; effect.

Consummation of a merger or consolidation shall have the effects provided in this section:

(1) The constituent entities which are a party to the plan of merger or consolidation shall be a single entity, which in the case of a merger shall be the entity designated in the plan of merger as the surviving entity and in the case of a consolidation shall be the new entity provided for in the plan of consolidation;

(2) The separate existence of each constituent entity party to the plan of merger or consolidation, except the surviving entity or the new entity, shall cease;

(3) The surviving entity or the new entity shall thereupon and thereafter possess all the rights, privileges, immunities, powers, and franchises, of a public as well as a private nature, of each constituent entity and shall be subject to all the restrictions, disabilities, and duties of each of such constituent entities to the extent such rights, privileges, immunities, powers, franchises, restrictions, disabilities, and duties are applicable to the form of existence of the surviving entity or the new entity;

(4) All property, real, personal, and mixed, all debts due on whatever account, including promises to make contributions to stated capital and sub-

scriptions, all other choses in action, and all and every other interest of or belonging to or due to each of the constituent entities shall be vested in the surviving entity or the new entity without further act or deed;

(5) The title to all real estate and any interest therein vested in any such constituent entity shall not revert or be in any way impaired by reason of such merger or consolidation;

(6) The surviving entity or the new entity shall be responsible and liable for all liabilities and obligations of each of the constituent entities so merged or consolidated, and any claim existing or action or proceeding pending by or against any such constituent entity may be prosecuted as if such merger or consolidation had not taken place or the surviving entity or the new entity may be substituted in the action;

(7) Neither the rights of creditors nor any liens on the property of any constituent entity shall be impaired by the merger or consolidation;

(8) In the case of a merger, if the surviving entity or the new entity is a limited liability company, a corporation, or a limited partnership, the articles of organization of the limited liability company, articles or certificate of incorporation of the corporation, or certificate of limited partnership of the limited partnership, as the case may be, shall be amended to the extent provided in the articles of merger;

(9) In the case of a consolidation in which the new entity is a limited liability company, corporation, or limited partnership, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of organization, articles or certificate of incorporation, or certificate of limited partnership, as the case may be, of the new entity, shall be deemed to be the original articles of organization, articles or certificate of incorporation, or certificate of limited partnership of the new entity;

(10) The membership or other interests in a limited liability company, shares or other interests in a corporation, or partnership or other interests in a limited partnership that is a constituent entity, as the case may be, that are to be converted or exchanged into interests, shares or other securities, cash, obligations, or other property under the terms of the articles of merger or consolidation shall be so converted, and the former holders thereof shall be entitled only to the rights provided in the articles of merger or consolidation or the rights otherwise provided by law; and

(11) Nothing in sections 21-2647 to 21-2652 shall abridge or impair any dissenter's or appraisal rights that may otherwise be available to the members or shareholders or other holders of an interest in any constituent entity.

Source: Laws 1994, LB 884, § 50; Laws 1997, LB 631, § 23.

21-2652 Merger or consolidation; domestic and foreign entities; conditions; effect.

(1) Any one or more domestic limited liability companies may merge or consolidate with or into one or more foreign limited liability companies, foreign corporations, foreign general partnerships, or foreign limited partnerships or any one or more foreign limited liability companies, foreign corporations, foreign general partnerships, or foreign limited partnerships may merge or consolidate with or into any one or more limited liability companies of this state if:

(a) The merger or consolidation is permitted by the law of the state or jurisdiction under whose laws each foreign constituent entity is organized or formed and each foreign constituent entity complies with that law in effecting the merger or consolidation;

(b) The foreign constituent entity complies with section 21-2650 if it is the surviving entity or the new entity; and

(c) Each domestic constituent entity complies with the applicable provisions of sections 21-2647 to 21-2649 and, if it is the surviving entity or the new entity, with section 21-2650.

(2) Upon a merger involving one or more domestic limited liability companies taking effect, if the surviving entity or the new entity is to be governed by the laws of any state other than this state or by the laws of the District of Columbia or of any foreign country, then the surviving entity or the new entity shall agree:

(a) That it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent entity party to the merger or consolidation that was organized under the laws of this state, as well as for enforcement of any obligation of the surviving entity or the new entity arising from the merger or consolidation; and

(b) To irrevocably appoint the Secretary of State as its agent for service of process in any such proceeding, and the surviving entity or the new entity shall specify the address to which a copy of the process shall be mailed to it by the Secretary of State.

(3) The effect of such merger or consolidation shall be as provided in section 21-2651 if the surviving entity or the new entity is to be governed by the laws of this state. If the surviving entity or the new entity is to be governed by the laws of any jurisdiction other than this state, the effect of such merger or consolidation shall be the same as provided in such section except insofar as the laws of such other jurisdiction provide otherwise.

Source: Laws 1994, LB 884, § 51; Laws 1997, LB 631, § 24.

21-2653 Notices; publication; filing.

Notice of organization, amendment, merger, consolidation, or statement of intent to dissolve must be published three successive weeks in some legal newspaper of general circulation near the registered office of the limited liability company. A notice of organization must show (1) the name of the limited liability company, (2) the address of the registered office, (3) the general nature of the business to be transacted, (4) the time of commencement and termination, if any, of the limited liability company, and (5) by what members or managers the affairs of the limited liability company are to be conducted. A brief resume of any amendment, merger, or consolidation of the limited liability company shall be published in the same manner and for the same period of time as notice of organization is required to be published. Whenever any limited liability company is voluntarily dissolved, notice of the dissolution thereof and the terms and conditions of such dissolution and the names of the persons who are to manage the company affairs and distribute its assets and their official titles, with a statement of assets and liabilities of the limited liability company, shall be published three successive weeks in some legal newspaper of general circulation within the county in which the registered

office of the limited liability company is located. Proof of publication of any of the notices shall be filed in the office of the Secretary of State. In the event any notice required to be given pursuant to this section is not given, but is subsequently published for the required time, and proof of the publication thereof is filed in the office of the Secretary of State, the acts of the limited liability company prior to, as well as after, such publication shall be valid.

Source: Laws 1994, LB 884, § 52; Laws 1997, LB 631, § 25.

ARTICLE 27

FOREIGN TRADE ZONES

Section
21-2701. Terms, defined.
21-2702. Foreign trade zones; establishment, operation, and maintenance.
21-2703. Foreign trade zones; select and describe locations.

21-2701 Terms, defined.

As used in sections 21-2701 to 21-2703, unless the context otherwise requires:

(1) Private corporation shall mean a corporation organized under Chapter 21, with a purpose of establishing, operating and maintaining a foreign trade zone;

(2) Public corporation shall mean this state; a political subdivision thereof; any municipality therein; any public agency of the state, of any political subdivision thereof, or of any municipality therein; or any other corporate instrumentality of this state, a political subdivision of this state or a municipality in this state; and

(3) Act of Congress shall mean the Act of Congress approved June 18, 1934, entitled An act to provide for the establishment, operation, and maintenance of foreign trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes, as amended, and commonly known as the Foreign Trade Zone Act of 1934.

Source: Laws 1973, LB 387, § 1; R.S.1943, (1991), § 21-20,145.

21-2702 Foreign trade zones; establishment, operation, and maintenance.

Any private corporation or public corporation shall have the power to apply to the proper authorities of the United States for a grant of the privilege of establishing, operating and maintaining foreign trade zones and foreign trade subzones under the provisions of the Act of Congress and, when such grant is issued, to accept such grant and to establish, operate and maintain such foreign trade zones and foreign trade subzones and to do all things necessary and proper to carry into effect the establishment, operation and maintenance of such zones, all in accordance with the Act of Congress and other applicable law and rules and regulations.

Source: Laws 1973, LB 387, § 2; R.S.1943, (1991), § 21-20,146.

21-2703 Foreign trade zones; select and describe locations.

Any private corporation or public corporation may select and describe the location of the foreign trade zones or foreign trade subzones for which an application is made, and make such rules and regulations concerning the establishment, operation and maintenance of the foreign trade zones or foreign

trade subzones as may be necessary to comply with the Act of Congress or as may be necessary to comply with the rules and regulations made in accordance with the Act of Congress.

Source: Laws 1973, LB 387, § 3; R.S.1943, (1991), § 21-20,147.

ARTICLE 28
RELIGIOUS ASSOCIATIONS

Section
21-2801. Religious association; ceases to exist; vesting of property.
21-2802. Religious association; vesting of property; application; notice; transfer of property.
21-2803. Religious association; affiliated with other association; withdrawal; use of name.

21-2801 Religious association; ceases to exist; vesting of property.

Whenever any religious association organized as follows:

(1) Unincorporated church, parish, congregation, or association which may or may not recognize some superior church authority,

(2) The single church, parish, or congregation which is incorporated as an entity and is legally independent of any superior denominational organization or authority, or

(3) The single church, parish, or congregation which is incorporated as a part of, and subject to the authority of some denominational organization having general supervision over it, ceases to exist or to maintain its organization, all its remaining real or personal property shall vest in, and be transferred, in the manner provided in section 21-2802, to the incorporated annual conference, presbytery, diocese, diocesan council, state convention, or other incorporated governing, supervising, or cooperative body of the same religious denomination within whose jurisdiction such association was located, or with which it was affiliated, it being intended that such property shall vest in and be transferred to the next highest governing, supervising, or cooperative corporate body of the same denomination, having its original corporate existence within this state; *Provided,* that associations or corporations as defined in subdivision (1), (2), or (3) of this section, which have been affiliated with or subject to superior church authority or denominational statewide cooperative agency or have used the name of such superior church or denominational statewide cooperative agency during the ownership of its property, becomes abandoned by their own act or as defined herein and where the governing law, constitution, articles of incorporation, or bylaws of such superior church authority or denominational statewide cooperative agency provides for reversion of such property to the superior church authority or denominational statewide cooperative agency or supervision of the disposition thereof, then, in case such local church is abandoned or ceases to exist or maintain its organization, in lieu of court proceedings, the superior church authority or denominational statewide cooperative agency may record a certified copy of that portion of its governing law, constitution, articles of incorporation, or bylaws in the office of the register of deeds of the county in which the real estate or other property is located and such provisions shall then be binding upon such property; *and provided further,* that the trustees or officers of such abandoned local church may, within three months after such recording, file an action in the district court to test the validity of the provisions of such governing law of the superior church authority

or denominational statewide cooperative agency. When any religious society as defined in subdivision (1), (2), or (3) of this section shall have ceased to maintain periodic meetings for the purpose of worship or religious instruction for a period of two consecutive years, or if the governing body or congregation of the church votes to dissolve or votes to discontinue holding religious services, such society shall be deemed to have ceased to exist or to maintain its organization within the meaning of this section.

Source: Laws 1967, c. 105, § 18, p. 333; R.S.1943, (1991), § 21-1993.

21-2802 Religious association; vesting of property; application; notice; transfer of property.

Upon the application to the district court for the county where such religious association was located, as provided in section 21-2801, by any officer, director, or trustee of the body in which such property is to vest as aforesaid, the court shall appoint a time for hearing the application. Three weeks' published and posted notice thereof shall be given, and any additional notice which the court may direct. Such notice shall direct all interested persons to appear on the date of such hearing and make their objections thereto, if any they have, and it shall be published in a newspaper published in whole or in part within such county or, if there is no such newspaper, in a newspaper published within this state and of general circulation within such county, as directed by the court. The posted notice shall be in three prominent public places within the county where such property is located. If, upon hearing, it appears that a proper case exists under section 21-2801, the court shall adjudge and direct a transfer of such property to be made through a trustee appointed by it for that purpose. Affidavits of the publishing and posting of the notice may be filed in the proceedings, and they shall be evidence in all actions and proceedings in the courts of this state.

Source: Laws 1967, c. 105, § 19, p. 334; R.S.1943, (1991), § 21-1994.

21-2803 Religious association; affiliated with other association; withdrawal; use of name.

Whenever any religious association, as defined in subdivision (1) or (2) of section 21-2801, shall have been affiliated with a conference, missionary society, state convention, or other body which is incorporated as the statewide cooperative agency of affiliated religious associations as defined in subdivision (1) or (2) of section 21-2801, and while so affiliated and with the assistance and cooperation of such statewide denominational cooperative agency has acquired property and caused title to the same to be vested in the name of such local association using in whole or in part the denominational designation of the denomination of such statewide denominational cooperative agency and thereafter, after a substantial change in the membership, such local religious association shall withdraw from and terminate its affiliation with the statewide denominational cooperative agency then such religious society, so far as title to the property acquired during such cooperation is concerned, shall be deemed to have ceased to exist or maintain its organization, within the meaning of section 21-2801, and shall not be thereafter entitled to use in the name of such religious association the characteristic denominational designation or other words calculated to induce the belief that it is in any way belonging to or

affiliated with the denomination maintaining such a statewide cooperative agency.

Source: Laws 1967, c. 105, § 20, p. 335; R.S.1943, (1991), § 21-1995.

ARTICLE 29

NEBRASKA LIMITED COOPERATIVE ASSOCIATION ACT

PART 1. GENERAL PROVISIONS

PART 2. FILING AND REPORTS

PART 3. FORMATION AND ARTICLES OF ORGANIZATION

PART 4. MEMBERS

Section

PART 5. MEMBER INTEREST

PART 6. MARKETING CONTRACTS

PART 7. DIRECTORS AND OFFICERS

PART 8. INDEMNIFICATION

PART 9. CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS

PART 10. DISSOCIATION

PART 11. DISSOLUTION

PART 1

GENERAL PROVISIONS

21-2901 Act, how cited.

Sections 21-2901 to 21-29,134 shall be known and may be cited as the Nebraska Limited Cooperative Association Act.

Source: Laws 2007, LB 368, § 1.

21-2902 Legislative power to amend or repeal.

The Legislature shall have the power to amend or repeal all or part of the Nebraska Limited Cooperative Association Act at any time and all domestic and foreign limited cooperative associations subject to the act shall be governed by the amendment or repeal.

Source: Laws 2007, LB 368, § 2.

21-2903 Terms, defined.

For purposes of the Nebraska Limited Cooperative Association Act, unless the context otherwise requires:

(1) Articles of organization includes initial, amended, and restated articles of organization. In the case of a foreign limited cooperative association, the term includes all records that:

(a) Have a function similar to articles of organization; and

(b) Are required to be filed in the office of the Secretary of State or other official having custody of articles of organization in this state or the country under whose law it is organized;

(2) Bylaws includes initial, amended, and restated bylaws;

(3) Contribution means a benefit that a person provides to a limited cooperative association in order to become a member or in the person's capacity as a member;

(4) Debtor in bankruptcy means a person that is the subject of:

(a) An order for relief under 11 U.S.C. 101 et seq., as the sections existed on January 1, 2008; or

(b) An order comparable to an order described in subdivision (4)(a) of this section under federal, state, or foreign law governing insolvency;

(5) Designated office means the office designated under section 21-2913;

(6) Distribution means a transfer of money or other property from a limited cooperative association to a member in the member's capacity as a member or to a transferee because of a right owned by the transferee;

(7) Domestic entity means an entity organized under the laws of this state;

(8) Entity means an association, a business trust, a company, a corporation, a limited cooperative association, a general partnership, a limited liability company, a limited liability partnership, or a limited partnership, domestic or foreign;

(9) Financial rights means the right to participate in allocation and distribution under sections 21-2980 and 21-2981 but does not include rights or obligations under a marketing contract governed by sections 21-2949 to 21-2952;

(10) Foreign limited cooperative association means a foreign entity organized under a law similar to the Nebraska Limited Cooperative Association Act in another jurisdiction;

(11) Foreign entity means an entity that is not a domestic entity;

(12) Governance rights means the right to participate in governance of the limited cooperative association under section 21-2928;

(13) Investor member means a person admitted as a member that is not required to conduct patronage business with the limited cooperative association in order to receive financial rights;

(14) Limited cooperative association means an association organized under the Nebraska Limited Cooperative Association Act;

(15) Member means a person that is a patron member or investor member in a limited cooperative association. The term does not include a person that has dissociated as a member;

(16) Members' interest means the interest of a patron member or investor member;

(17) Members' meeting means an annual or a special members' meeting;

(18) Patron means a person or entity that conducts economic activity with a limited cooperative association which entitles the person to receive financial rights based upon patronage;

(19) Patronage means business transactions between a limited cooperative association and a person which entitles the person to receive financial rights based on the value or quantity of business done between the person and the limited cooperative association;

(20) Patron member means a person admitted as a patron member pursuant to the articles of organization or bylaws and who is permitted or required by the articles of organization or bylaws to conduct patronage business with the limited cooperative association in order to receive financial rights;

(21) Person means an individual; an entity; a trust; a governmental subdivision, agency, or instrumentality; or any other legal or commercial entity;

(22) Principal office means the office, whether or not in this state, where the principal executive office of a limited cooperative association or a foreign limited cooperative association is located;

(23) Record, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(24) Required information means the information a limited cooperative association is required to maintain under section 21-2910;

(25) Sign means, with the present intent to authenticate a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach or logically associate an electronic symbol, sound, or process to or with a record;

(26) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

(27) Transfer includes assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law; and

(28) Voting member means a member that, under the articles of organization or bylaws, has a right to vote on matters subject to vote by members.

Source: Laws 2007, LB 368, § 3.

21-2904 Nature of limited cooperative association.

(1) A limited cooperative association is an entity distinct from its members.

(2) A limited cooperative association may be organized under the Nebraska Limited Cooperative Association Act for any lawful purpose, regardless of whether or not for profit, except for the purpose of being a financial institution which is subject to supervision by the Department of Banking and Finance under section 8-102 or which would be subject to supervision by the department if chartered by the State of Nebraska or the business of an insurer as described in section 44-102.

(3) A limited cooperative association has a perpetual duration, unless otherwise set forth in its articles of organization or bylaws.

Source: Laws 2007, LB 368, § 4.

21-2905 Powers.

(1) Except as otherwise provided in the Nebraska Limited Cooperative Association Act, a limited cooperative association has the power to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a member for harm caused to the limited cooperative association by a violation of the articles of organization or bylaws of the limited cooperative association or violation of a duty to the limited cooperative association.

(2)(a) Except as otherwise provided in subdivision (b) of this subsection, a limited cooperative association shall not issue bonds, debentures, or other evidence of indebtedness to a member unless, prior to issuance, the association provides the member with a written disclosure statement that includes a conspicuous notice that the money is not insured or guaranteed by an agency or instrumentality of the United States Government and that the investment may lose value.

(b) A limited cooperative association need not provide the written disclosure statement described in subdivision (a) of this subsection to any member that is described in subdivision (8) of section 8-1111.

(c) Any extension of credit by a limited cooperative association to a member in connection with the sale of the association's goods or services shall not:

(i) Exceed nine months from the date of such sale; or

(ii) Be secured by real property, except that an extension of credit in default at the end of the original term may be extended or renewed for successive periods not exceeding nine months in length and may be secured by real property at the end of the original term or any extension or renewal thereof.

(d) No new money may be advanced by an association in connection with the extension or renewal of an extension of credit granted under subdivision (2)(c) of this section.

Source: Laws 2007, LB 368, § 5.

21-2906 Name.

(1) The name of a limited cooperative association must contain the words ''limited cooperative association'' or their abbreviation.

(2) The name of a limited cooperative association shall not be the same as or deceptively similar to:

(a) The name of any entity organized or authorized to transact business in this state;

(b) A name reserved or registered under section 21-2907 or 21-2908; and

(c) A fictitious name approved for a foreign limited cooperative association authorized to transact business in this state.

Source: Laws 2007, LB 368, § 6.

21-2907 Reservation of name.

(1) A person may reserve the exclusive use of the name of a limited cooperative association, including a fictitious name for a foreign limited cooperative association whose name is unavailable, by delivering an application to the Secretary of State for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the name applied for is available, it shall be reserved for the applicant's exclusive use for a nonrenewable one-hundred-twenty-day period.

(2) The owner of a name reserved for a limited cooperative association may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer which states the name and address of the transferee.

Source: Laws 2007, LB 368, § 7.

21-2908 Foreign limited cooperative association; name.

(1) A foreign limited cooperative association may register its name pursuant to section 21-2907 if the name is not the same as or deceptively similar to names that are unavailable under section 21-2906.

(2) A foreign limited cooperative association may register its name, or its name with any addition required by section 21-29,106, by delivering to the Secretary of State for filing an application:

(a) Setting forth its name, or its name with any addition required by section 21-29,106, the state or country of organization and date of its organization, and a brief description of the nature of the affairs in which it is engaged; and

(b) Accompanied by a certificate of existence or authorization from the state or country of organization.

(3) A foreign limited cooperative association whose registration is effective may qualify as a foreign limited cooperative association under its name or consent in a record to the use of its name by a limited cooperative association later organized under the Nebraska Limited Cooperative Association Act or by a foreign limited cooperative association later authorized to transact business in this state. The registration of the name terminates when the limited cooperative association is organized or the foreign limited cooperative association qualifies or consents to the qualification of another foreign limited cooperative association under the registered name.

Source: Laws 2007, LB 368, § 8.

21-2909 Use of terms or abbreviation.

The use of the terms ''cooperative or nonstock cooperative'' or an abbreviation of the terms under the Nebraska Limited Cooperative Association Act is not a violation of the provisions restricting the use of the terms under the Nonstock

Cooperative Marketing Act or sections 21-1301 to 21-1339, however, use of the term ''cooperative'' by a limited cooperative association shall not be construed under any other law to qualify a limited cooperative association as a cooperative organized under the Nonstock Cooperative Marketing Act or sections 21-1301 to 21-1339.

Source: Laws 2007, LB 368, § 9.

Cross References

Nonstock Cooperative Marketing Act, see section 21-1401.

21-2910 Required information.

A limited cooperative association shall maintain in a record at its principal office the following information:

(1) A current list showing the full name and last-known street address, mailing address, and term of office of each director and officer;

(2) A copy of the initial articles of organization and all amendments to and restatement of the articles, together with signed copies of any powers of attorney under which any articles, amendments, or restatement has been signed;

(3) A copy of the initial bylaws and all amendments to or restatement of the bylaws;

(4) A copy of any filed articles of merger;

(5) A copy of any audited financial statements;

(6) A copy of the minutes of meetings of members and records of all actions taken by members without a meeting for the three most recent years;

(7) A current list showing the full name and last-known street and mailing addresses, separately identifying the patron members, in alphabetical order, and the investor members, in alphabetical order;

(8) A copy of the minutes of directors' meetings and records of all actions taken by directors without a meeting for the three most recent years;

(9) A record stating:

(a) The amount of cash contributed and agreed to be contributed by each member;

(b) A description and statement of the agreed value of other benefits contributed and agreed to be contributed by each member;

(c) The times at which, or events on the happening of which, any additional contributions agreed to be made by each member are to be made; and

(d) For a person that is both a patron member and an investor member, a specification of the interest the person owns in each capacity; and

(10) A copy of all communications in a record to members as a group or to any class of members as a group for the three most recent years.

Source: Laws 2007, LB 368, § 10.

21-2911 Business transactions of member with limited cooperative association.

A member may lend money to and transact other business with the limited cooperative association and has the same rights and obligations with respect to

the loan or other transaction as a person that is not a member subject to the articles of organization or bylaws or a specific contract relating to the transaction.

Source: Laws 2007, LB 368, § 11.

21-2912 Dual capacity.

A person may be both a patron member and an investor member. A person that is both a patron member and an investor member has the rights, powers, duties, and obligations provided by the Nebraska Limited Cooperative Association Act and the articles of organization or bylaws in each of those capacities. When the person acts as a patron member, the person is subject to the obligations, duties, and restrictions under the act and the articles of organization or bylaws governing patron members. When the person acts as an investor member, the person is subject to the obligations, duties, and restrictions under the act and the articles of organization or bylaws governing investor members.

Source: Laws 2007, LB 368, § 12.

21-2913 Designated office and agent for service of process.

(1) A limited cooperative association and a foreign limited cooperative association shall designate and continuously maintain in this state:

(a) An office, which need not be a place of its activity in this state; and

(b) An agent for service of process.

(2) An agent for service of process of a limited cooperative association or foreign limited cooperative association shall be an individual who is a resident of this state or other person authorized to do business in this state.

Source: Laws 2007, LB 368, § 13.

21-2914 Change of designated office or agent for service of process.

(1) In order to change its registered office, its agent for service of process, or the address of its agent for service of process, a limited cooperative association or a foreign limited cooperative association shall deliver to the Secretary of State for filing a statement of change containing:

(a) The name of the limited cooperative association or foreign limited cooperative association;

(b) The street and mailing addresses of its current registered office;

(c) If the current registered office is to be changed, the street and mailing addresses of the new registered office;

(d) The name and street and mailing addresses of its current agent for service of process; and

(e) If the current agent for service of process or an address of the agent is to be changed, the new information.

(2) A statement of change is effective when filed with the Secretary of State.

Source: Laws 2007, LB 368, § 14.

21-2915 Resignation of agent for service of process.

(1) To resign as an agent for service of process of a limited cooperative association or a foreign limited cooperative association, the agent shall deliver

to the Secretary of State for filing a statement of resignation containing the name of the limited cooperative association or foreign limited cooperative association.

(2) After receiving a statement of resignation, the Secretary of State shall file it and mail a copy to the principal office of the limited cooperative association or foreign limited cooperative association and another copy to the principal office if the address of the principal office appears in the records of the Secretary of State and is different from the address of the registered office.

(3) An agency for service of process terminates thirty days after the Secretary of State files the statement of resignation.

Source: Laws 2007, LB 368, § 15.

21-2916 Service of process.

(1) An agent for service of process appointed by a limited cooperative association or a foreign limited cooperative association is an agent of the limited cooperative association or foreign limited cooperative association for service of any process, notice, or demand required or permitted by law to be served upon the limited cooperative association or foreign limited cooperative association.

(2)(a) If a limited cooperative association or a foreign limited cooperative association has no agent for service of process or the agent cannot with reasonable diligence be served the limited cooperative association may be served by registered or certified mail, return receipt requested, addressed to the limited cooperative association at its principal office. Service shall be perfected under this subsection at the earliest of:

(i) The date the limited cooperative association receives the mail;

(ii) The date shown on the return receipt, if signed on behalf of the limited cooperative association; or

(iii) Five days after its deposit in the United States mail as evidenced by the postmark, if mailed postage prepaid and correctly addressed.

(b) This subsection shall not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited cooperative association in any other manner now or hereafter permitted by law.

Source: Laws 2007, LB 368, § 16.

PART 2

FILING AND REPORTS

21-2917 Signing of records to be delivered for filing to the Secretary of State.

Records delivered to the Secretary of State for filing pursuant to the Nebraska Limited Cooperative Association Act shall be signed in the following manner:

(1) The initial articles of organization shall be signed by at least one organizer;

(2) A notice of cancellation under section 21-29,108 shall be signed by each organizer that signed the initial articles of organization;

(3) Except as otherwise provided in this subsection, a record signed on behalf of an existing limited cooperative association shall be signed by an officer or authorized representative; and

(4) A record filed on behalf of a dissolved limited cooperative association by a person winding up the activities under section 21-2989 or a person appointed under such section to wind up those activities.

Source: Laws 2007, LB 368, § 17.

21-2918 Signing and filing of records pursuant to judicial order.

(1) If a person required by the Nebraska Limited Cooperative Association Act to sign or deliver a record to the Secretary of State for filing does not do so, any other aggrieved person may petition the district court of Lancaster County to order:

(a) The person to sign the record and the person to deliver the record to the Secretary of State for filing; or

(b) The Secretary of State to file the record unsigned.

(2) If an aggrieved person under subsection (1) of this section is not the limited cooperative association or foreign limited cooperative association to which the record pertains, the aggrieved person shall make the limited cooperative association or foreign limited cooperative association a party to the action. An aggrieved person under subsection (1) of this section may seek any or all of the remedies provided in such subsection in the same action.

(3) A record filed unsigned pursuant to this section is effective without being signed.

Source: Laws 2007, LB 368, § 18.

21-2919 Delivery to and filing of records by Secretary of State; effective time and date.

(1) A record authorized to be delivered to the Secretary of State for filing under the Nebraska Limited Cooperative Association Act shall be captioned to describe the record's purpose and be delivered to the Secretary of State in a medium authorized by the Secretary of State. Unless the Secretary of State determines that a record does not comply with the filing requirements of the act and if all filing fees have been paid the Secretary of State shall file the record and send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

(2) Upon request and payment of a fee, the Secretary of State shall send to the requester a certified copy of the requested record.

(3) Except as otherwise provided in the act, a record delivered to the Secretary of State for filing under the act may specify an effective time and a delayed effective date. Except as otherwise provided in the act, a record filed by the Secretary of State is effective:

(a) If the record does not specify an effective time and does not specify a delayed effective date, on the date and at the time the record is filed as evidenced by the Secretary of State's endorsement of the date and time on the record;

(b) If the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(c) If the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(i) The specified date; or

(ii) The ninetieth day after the record is filed; or

(d) If the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(i) The specified date; or

(ii) Ninety days after the record is filed.

Source: Laws 2007, LB 368, § 19.

21-2920 Correcting filed record.

(1) A limited cooperative association or foreign limited cooperative association may deliver to the Secretary of State for filing a statement of correction to correct a record previously delivered by the limited cooperative association or foreign limited cooperative association to the Secretary of State and filed by the Secretary of State, if at the time of filing the record contained false or erroneous information or was defectively signed.

(2) A statement of correction shall not state a delayed effective date and shall:

(a) Describe the record to be corrected, including its filing date, or contain an attached copy of the record as filed;

(b) Specify the incorrect information and the reason it is incorrect or the manner in which the signing was defective; and

(c) Correct the incorrect information or defective signature.

(3) When filed by the Secretary of State, a statement of correction is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed as to persons relying on the uncorrected record and adversely affected by the correction prior to its correction.

Source: Laws 2007, LB 368, § 20.

21-2921 Liability for false information in filed record.

If a record delivered to the Secretary of State for filing under the Nebraska Limited Cooperative Association Act and filed by the Secretary of State contains false information, a person that suffers loss by reliance on the information may recover damages for the loss from a person that signed the record or caused another to sign it on the person's behalf and knew the information to be false at the time the record was signed.

Source: Laws 2007, LB 368, § 21.

21-2922 Certificate of good standing or authorization.

(1) The Secretary of State, upon application and payment of the required fee, shall furnish a certificate of existence for a limited cooperative association if the records filed in the office of the Secretary of State show that the Secretary of State has filed articles of organization, the limited cooperative association is in good standing, and there has not been filed articles of dissolution.

(2) The Secretary of State, upon application and payment of the required fee, shall furnish a certificate of authorization for a foreign limited cooperative association if the records filed in the office of the Secretary of State show that

the Secretary of State has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation pursuant to section 21-29,108.

(3) Subject to any qualification stated in the certificate, a certificate of good standing or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the limited cooperative association or foreign limited cooperative association is in good standing or is authorized to transact business in this state.

Source: Laws 2007, LB 368, § 22.

21-2923 Biennial report.

(1) A limited cooperative association or a foreign limited cooperative association authorized to transact business in this state shall deliver to the Secretary of State for filing a biennial report that states:

(a) The name of the limited cooperative association or foreign limited cooperative association;

(b) The street and mailing addresses of the limited cooperative association's or foreign limited cooperative association's designated office and the name and street and mailing addresses of its agent for service of process in this state;

(c) In the case of a limited cooperative association, the street and mailing addresses of its principal office if different from its designated office; and

(d) In the case of a foreign limited cooperative association, the state or other jurisdiction under whose law the foreign limited cooperative association is formed and any alternative name adopted under section 21-29,106.

(2) Information in the biennial report must be current as of the date the biennial report is delivered to the Secretary of State.

(3) Commencing on January 1, 2009, a biennial report shall be filed between January 1 and April 1 of each odd-numbered year following the year in which a limited cooperative association files articles of organization or a foreign limited cooperative association becomes authorized to transact business in this state. A correction or amendment to a biennial report may be filed at any time.

(4) If a biennial report does not contain the information required in subsection (1) of this section, the Secretary of State shall promptly notify the reporting limited cooperative association or foreign limited cooperative association and return the report for correction. If the report is corrected to contain the information required in subsection (1) of this section and delivered to the Secretary of State within thirty days after the effective date of the notice, it is timely delivered.

(5) If a filed biennial report contains an address of a designated office or the name or address of an agent for service of process which differs from the information shown in the records of the Secretary of State immediately before the filing, the differing information in the biennial report is considered a statement of change under section 21-2914.

(6) If a limited cooperative association fails to file a biennial report under this section, the Secretary of State may proceed under section 21-2994 to administratively dissolve the limited cooperative association.

(7) If a foreign limited cooperative association fails to file a biennial report under this section, the Secretary of State may proceed under section 21-29,107

to revoke the certificate of authority of the foreign limited cooperative association.

Source: Laws 2007, LB 368, § 23.

21-2924 Filing fees.

The filing fees for records filed under this section with the Secretary of State are governed by section 33-101.

Source: Laws 2007, LB 368, § 24.

PART 3

FORMATION AND ARTICLES OF ORGANIZATION

21-2925 Organizers.

A limited cooperative association may be organized by one or more organizers who need not be members.

Source: Laws 2007, LB 368, § 25.

21-2926 Formation of limited cooperative association; articles of organization.

(1) To form a limited cooperative association, articles of organization shall be delivered to the Secretary of State for filing. The articles shall state:

(a) The name of the limited cooperative association;

(b) The purposes for which the limited cooperative association was formed;

(c) The street and mailing addresses of the initial registered office and the name, street, and mailing addresses of the registered agent for service of process;

(d) The name and the street and mailing addresses of each organizer;

(e) The term for which the limited cooperative association is to exist, if other than perpetual;

(f) The number and terms of directors or the method in which the number and terms shall be determined; and

(g) Any additional information required by the Secretary of State.

(2) Articles of organization may contain any other matters deemed relevant by the organizer or organizers.

(3) Unless the articles of organization state a delayed effective date, a limited cooperative association is formed when the Secretary of State receives for filing the articles of organization. If the articles state a delayed effective date, a limited cooperative association is not formed if, before the articles take effect, one or more organizers sign and deliver to the Secretary of State for filing a notice of cancellation.

Source: Laws 2007, LB 368, § 26.

21-2927 Organization of limited cooperative association.

After the effective date of the articles of organization:

(1) If initial directors are named in the articles of organization, the initial directors shall hold an organizational meeting to appoint officers, adopt initial bylaws, and carry on any other business brought before the meeting; and

(2) If initial directors are not named in the articles of organization, the organizers shall designate the initial directors and call a meeting of them to adopt initial bylaws or carry on any other business necessary and proper to complete the organization of the limited cooperative association.

Source: Laws 2007, LB 368, § 27.

21-2928 Bylaws.

(1) The bylaws shall be in a record and, if not stated in the articles of organization, include:

(a) A statement of the capital structure of the limited cooperative association, including a statement of the classes and relative rights, preferences, and restrictions granted to or imposed upon each group, class, or other type of member interest, the rights to share in profits or distributions of the limited cooperative association, and the method to admit members;

(b) A statement designating the voting and governance rights, including which members have voting power and any limitations or restrictions on the voting power under sections 21-2939 and 21-2942;

(c) A statement that member interests held by a member are transferable only with the approval of the board of directors or as otherwise provided in the articles of organization or bylaws; and

(d) If investor members are authorized, a statement concerning how profits and losses are apportioned and how distributions are made as between patron members and investor members.

(2) The bylaws of the limited cooperative association may contain any provision for managing and regulating the affairs of the limited cooperative association which is not inconsistent with the articles of organization.

Source: Laws 2007, LB 368, § 28.

PART 4

MEMBERS

21-2929 Members.

In order to commence business, a limited cooperative association shall have two or more patron members, except that a limited cooperative association may have only one member if the member is an entity organized under the Nebraska Limited Cooperative Association Act.

Source: Laws 2007, LB 368, § 29.

21-2930 Becoming a member.

A person becomes a member:

(1) As provided in the articles of organization and bylaws;

(2) As the result of merger or consolidation under section 21-29,122 or 21-29,128; or

(3) With the consent of all the members.

Source: Laws 2007, LB 368, § 30.

21-2931 No right or power as member to bind limited cooperative association.

A member does not have the right or power as a member to act for or bind the limited cooperative association.

Source: Laws 2007, LB 368, § 31.

21-2932 No liability as member for limited cooperative association obligations.

Unless otherwise provided by the articles of organization, an obligation of a limited cooperative association, whether arising in contract, tort, or otherwise, is not the obligation of a member. A member is not personally liable, by way of contribution or otherwise, for an obligation of the limited cooperative association solely by reason of being a member.

Source: Laws 2007, LB 368, § 32.

21-2933 Right of member and former member to information.

(1) On ten days' demand, made in a record received by the limited cooperative association, a member may inspect and copy required information under subdivisions (1) through (7) of section 21-2910 during regular business hours in the limited cooperative association's principal office. A demand to inspect and copy records shall be in good faith and for a proper purpose. A member may demand the same information under subdivisions (1) through (7) of section 21-2910 no more than once during a twelve-month period.

(2) On demand, made in a record received by the limited cooperative association, a member may obtain from the limited cooperative association and inspect and copy required information if the demand is just and reasonable. A demand to inspect and copy records is just and reasonable if:

(a) The member seeks the information for a proper purpose reasonably related to the member's interest as a member;

(b) The demand includes a description, with reasonable particularity, of the information sought and the purpose for seeking the information; and

(c) The information sought is directly connected to the member's purpose.

(3) Within ten days after receiving a demand pursuant to subdivision (2)(b) of this section, the limited cooperative association shall inform, in a record, the member that made the demand:

(a) Of what information the limited cooperative association will provide in response to the demand;

(b) Of the reasonable time and place that the limited cooperative association will provide the information; and

(c) That the limited cooperative association will decline to provide any demanded information and the limited cooperative association's reasons for declining.

(4) A person dissociated as a member pursuant to section 21-2982 may inspect and copy required information during regular business hours in the limited cooperative association's principal office if:

(a) The information pertains to the period during which the person was a member;

(b) The person seeks the information in good faith; and

(c) The person complies with this section.

(5) The limited cooperative association shall respond to a demand made pursuant to subsection (4) of this section in the same manner as otherwise provided in this section.

(6) The limited cooperative association may impose reasonable restrictions, including nondisclosure restrictions, on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction, the limited cooperative association has the burden of proving reasonableness.

(7) A limited cooperative association may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(8) A member or person dissociated as a member may exercise the rights under this section through an attorney or other agent. A restriction imposed under this section or by the articles of organization or bylaws on a member or person dissociated as a member applies both to the attorney or other agent and to the member or person dissociated as a member.

(9) The rights stated in this section do not extend to a person as transferee but may be exercised by the legal representative of an individual under legal disability who is a member or person dissociated as a member.

Source: Laws 2007, LB 368, § 33.

21-2934 Annual members' meetings.

(1) The members of the limited cooperative association shall meet annually as provided in the articles of organization or bylaws or at the direction of the board of directors not inconsistent with the articles of organization or bylaws.

(2) Annual members' meetings may be held in or out of this state at the place stated in the articles of organization or bylaws or by the board of directors in accordance with the articles of organization or bylaws.

(3) The board of directors shall report or cause to be reported at the annual members' meeting the business and financial condition as of the close of the most recent fiscal year.

(4) Unless otherwise provided by the articles of organization or bylaws, the board of directors shall designate the presiding officer of the annual members' meeting.

Source: Laws 2007, LB 368, § 34.

21-2935 Special members' meetings.

(1) Special members' meetings shall be called:

(a) As provided in the articles of organization or bylaws;

(b) By a majority vote of the board of directors;

(c) By demand in a record signed by members holding at least ten percent of the votes of any class or group entitled to be cast on the matter that is the purpose of the meeting; or

(d) By demand in a record signed by members holding at least ten percent of all votes entitled to be cast on the matter that is the purpose of the meeting.

(2) Any voting member may withdraw its demand under this section before the receipt by the limited cooperative association of demands sufficient to require a special members' meeting.

(3) A special members' meeting may be held in or out of this state at the place stated in the articles of organization or bylaws or by the board of directors in accordance with the articles of organization or bylaws.

(4) Only affairs within the purpose or purposes stated pursuant to subsection (2) of section 21-2965 may be conducted at a special members' meeting.

(5) Unless otherwise provided by the articles of organization or bylaws, the presiding officer of the meeting shall be designated by the board of directors.

Source: Laws 2007, LB 368, § 35.

21-2936 Notice of members' meetings.

(1) The limited cooperative association shall notify each member of the time, date, and place of any annual or special members' meeting not less than ten nor more than fifty days before the meeting.

(2) Unless the articles of organization or bylaws otherwise provide, notice of an annual members' meeting need not include a description of the purpose or purposes of the meeting.

(3) Notice of a special members' meeting shall include a description of the purpose or purposes of the meeting as contained in the demand under section 21-2935 or as voted upon by the board of directors under such section.

Source: Laws 2007, LB 368, § 36.

21-2937 Waiver of members' meeting notice.

(1) A member may waive notice of any meeting of the members either before, during, or after the meeting.

(2) A member's participation in a meeting is waiver of notice of that meeting unless the member objects to the meeting at the beginning of the meeting or promptly upon arrival at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Source: Laws 2007, LB 368, § 37.

21-2938 Quorum.

Unless the articles of organization or bylaws provide otherwise, ten percent, but not less than five nor more than fifty of the members, need to be present at an annual or special members' meeting to constitute a quorum.

Source: Laws 2007, LB 368, § 38.

21-2939 Voting by patron members.

(1) Each patron member has one vote but the articles of organization or bylaws may provide additional voting power to members on the basis of patronage under section 21-2941 and may provide for voting by district, group, or class under section 21-2956.

(2) If a limited cooperative association has both patron and investor members:

(a) The aggregate voting power of all patron members shall not be less than fifty-one percent of the entire voting power entitled to vote but the articles of organization or bylaws may reduce the collective voting power of patron

members to not less than fifteen percent of the entire voting power entitled to vote; and

(b) The entire aggregate voting power of patron members shall be voted as determined by the majority vote of patron members voting at the members' meeting.

Source: Laws 2007, LB 368, § 39.

21-2940 Action without a meeting.

(1) Unless otherwise provided by the articles of organization or bylaws, any action that may be taken by the members may be taken without a meeting if each member entitled to vote on such action consents to the action in a record.

(2) Consent may be withdrawn by a member in a record at any time before the limited cooperative association receives a consent from each member entitled to vote.

(3) The consent record of any action may specify the effective date or time of the action.

Source: Laws 2007, LB 368, § 40.

21-2941 Determination of voting power of patron member.

The articles of organization or bylaws may provide additional voting power be allocated for each patron member for:

(1) Actual, estimated, or potential patronage or any combination thereof;

(2) Equity allocated or held by a patron member in the limited cooperative association; or

(3) Any combination of subdivisions (1) and (2) of this section.

Source: Laws 2007, LB 368, § 41.

21-2942 Voting by investor members.

If the articles of organization or bylaws provide for investor members, each investor member has one vote except as otherwise provided by the articles of organization or bylaws.

Source: Laws 2007, LB 368, § 42.

21-2943 Manner of voting.

(1) Proxy voting by members is prohibited.

(2) Delegate voting based upon geographical district, group, or class is not voting by proxy under this section.

(3) The articles of organization or bylaws may provide for member voting by secret ballot delivered by mail or other means.

(4) The articles of organization or bylaws may provide for members to attend meetings or conduct members' meetings through the use of any means of communication, if all members attending the meeting can simultaneously communicate with each other during the meeting.

Source: Laws 2007, LB 368, § 43.

21-2944 Districts and delegates; classes of members.

(1) The articles of organization or bylaws may provide:

(a) For the formation of districts and the conduct of members' meetings by districts and that elections of directors may be held at district meetings; or

(b) That districts may elect district delegates to represent and vote for the district in annual and special meetings of members.

(2) A delegate selected under subdivision (1)(b) of this section has one vote subject to subsection (3) of this section.

(3) The articles of organization or bylaws may provide additional voting power be allocated to each district, group, or class or delegate for the aggregate of the number of patron members in each district, group, or class as provided under section 21-2941.

Source: Laws 2007, LB 368, § 44.

PART 5

MEMBER INTEREST

21-2945 Member interest.

A member's interest:

(1) Consists of: (a) Governance rights under allocation and distributions; (b) financial rights; and (c) the right or obligation, if any, to do business with the limited cooperative association;

(2) Is personal property; and

(3) May be in certificated or uncertificated form.

Source: Laws 2007, LB 368, § 45.

21-2946 Patron and investor member interests.

(1) Subject to subsection (2) of this section, member interests shall be patron member interests.

(2) The articles of organization or bylaws may establish investor member interests.

Source: Laws 2007, LB 368, § 46.

21-2947 Transferability of member interest.

(1) Unless otherwise provided in the articles of organization or bylaws and subject to subsection (2) of this section, member interests are not transferable. The terms of the restriction on transferability shall be set forth in the limited cooperative association articles of organization or bylaws, the member records of the limited cooperative association, and shall be conspicuously noted on any certificates evidencing a member's interest.

(2) A member may transfer its financial rights in the limited cooperative association unless the transfer is restricted or prohibited by the articles of organization or bylaws.

(3) The transferee of a member's financial rights has, to the extent transferred, the right to share in the allocation of surplus, profits, or losses and to receive the distributions to the member transferring the interest.

(4) The transferee does not become a member upon transfer of a member's financial rights unless it is admitted as a member by the limited cooperative association.

(5) A limited cooperative association need not give effect to a transfer under this section until the limited cooperative association has notice of the transfer.

(6) A transfer of a member's financial rights in violation of a restriction or prohibition on transfer contained in the articles of organization or bylaws is void.

Source: Laws 2007, LB 368, § 47.

21-2948 Security interest.

(1) An investor member or transferee may grant a security interest in financial rights in a limited cooperative association, but not in the governance rights in such association.

(2) A patron member shall not grant a security interest in financial rights or governance rights in a limited cooperative association.

(3) The granting of a security interest in financial rights is not considered a transfer for purposes of section 21-2947. Upon foreclosure of a security interest in financial rights a person obtaining the financial rights shall only obtain financial rights subject to the security interest and shall not obtain any governance rights or other rights with respect to the limited cooperative association.

(4) The limitation of this section to financial rights shall not apply in the case of a member interest that is not subject to a restriction or prohibition on transfer under the articles of organization or bylaws.

Source: Laws 2007, LB 368, § 48.

PART 6

MARKETING CONTRACTS

21-2949 Marketing contracts; authority.

Unless otherwise provided by the articles of organization or bylaws, a limited cooperative association may contract with another party, who need not be a patron member, requiring the other party to:

(1) Sell or deliver for sale or marketing on the person's behalf a specified portion of the other party's agricultural product or specified commodity exclusively to or through the limited cooperative association or any facilities furnished by the limited cooperative association or authorize the limited cooperative association to act for the party in any manner with respect to the product; and

(2) Buy or procure from or through the limited cooperative association or any facilities furnished by the limited cooperative association all or a specified part of the goods or services to be bought or procured by the party or authorize the limited cooperative association to act for the party in any manner in the procurement of goods or the performance of services.

Source: Laws 2007, LB 368, § 49.

21-2950 Marketing contract.

(1) The contract may provide for sale of the product or commodity to the limited cooperative association, and, if so, the sale transfers title absolutely to the limited cooperative association except for security interests properly perfected under other law, upon delivery, or at any other specific time expressly provided by the contract.

(2) The contract may authorize the limited cooperative association to grant a security interest in the product or commodity delivered and may provide that the limited cooperative association may sell the product or commodity delivered and pay or distribute the sales price on a pooled or other basis to the other party after deducting the following:

(a) Selling, processing, overhead, and other costs and expenses; and

(b) Reserves for the purposes set forth in subdivision (3)(b) of section 21-2980.

Source: Laws 2007, LB 368, § 50.

21-2951 Duration of marketing contract.

A single term of a contract shall not exceed ten years, but may be renewable for additional periods not exceeding five years each, subject to the right of either party not to renew by giving record notice during a period of the current term as specified in the contract.

Source: Laws 2007, LB 368, § 51.

21-2952 Remedies for breach of contract.

(1) The contract or articles of organization or bylaws may establish a specific sum of money as liquidated damages to be paid by a patron member to the limited cooperative association. The damages may be a percentage of the value of a specific amount per unit of the products, goods, or services involved by the breach or a fixed sum of money.

(2) If there is a breach or threatened breach of a contract, the limited cooperative association is entitled to an injunction to prevent the breach and continuing breach and to a judgment of specific performance. Pending adjudication of the action, and upon filing sufficient bond, the limited cooperative association is entitled to a temporary restraining order and a preliminary injunction.

(3) Nothing in this section shall restrict a limited cooperative association from seeking any other remedy at law or equity in the enforcement of a marketing contract.

Source: Laws 2007, LB 368, § 52.

PART 7

DIRECTORS AND OFFICERS

21-2953 Existence and powers of board of directors.

(1) A limited cooperative association shall have a board of directors consisting of three or more directors as set forth in the articles of organization or bylaws unless the number of members is less than three. If there are fewer than three members, the number of directors shall not be less than the number of members in the limited cooperative association.

(2) The affairs of the limited cooperative association shall be managed by, or under the direction of, the board of directors.

(3) A director does not have agency authority on behalf of the limited cooperative association solely by being a director.

Source: Laws 2007, LB 368, § 53.

21-2954 No liability as director for limited cooperative association's obligations.

An obligation of a limited cooperative association, whether arising in contract, tort, or otherwise, is not the obligation of a director. A director is not personally liable, directly or indirectly, by way of contribution or otherwise, for an obligation of the limited cooperative association solely by reason of being a director.

Source: Laws 2007, LB 368, § 54.

21-2955 Qualifications of directors and composition of board.

(1) A director shall be an individual or individual representative of a member that is not an individual.

(2) The articles of organization or bylaws may provide for qualification of directors subject to this section.

(3) Except as otherwise provided in the articles of organization or bylaws and subject to subsections (4) and (5) of this section, each director shall be a member of the limited cooperative association or a designee of a member that is not an individual.

(4) Unless otherwise provided in the articles of organization or bylaws, a director shall be an officer or employee of the limited cooperative association.

(5) If the limited cooperative association is permitted to have nonmember directors by its articles of organization or bylaws, the number of nonmember directors shall not exceed:

(a) One director, if there are two, three, or four directors; and

(b) One-fifth of the total number of directors, if there are five or more directors.

Source: Laws 2007, LB 368, § 55.

21-2956 Election of directors.

(1) At least fifty percent of the board of directors of a limited cooperative association shall be elected exclusively by patron members.

(2) The articles of organization may provide for the election of all or a specified number of directors by the holders of one or more groups of classes of members' interests.

(3) The articles of organization or bylaws may provide for the nomination or election of directors by geographic district directly or by district delegates.

(4) Cumulative voting is prohibited unless otherwise provided in the articles of organization or bylaws.

(5) Except as otherwise provided by the articles of organization, bylaws, or section 21-2961, member directors shall be elected at an annual members' meeting.

(6) Nonmember directors shall be elected in the same manner as member directors unless the articles of organization or bylaws provide for a different method of selection.

Source: Laws 2007, LB 368, § 56.

21-2957 Term of director.

(1) A director's term expires at the annual members' meeting following the director's election unless otherwise provided in the articles of organization or bylaws. The term of a director shall not exceed three years.

(2) Unless otherwise provided in the articles of organization or bylaws, a director may be reelected for subsequent terms.

(3) A director continues to serve as director until a successor director is elected and qualified or until the director is removed, resigns, or dies.

Source: Laws 2007, LB 368, § 57.

21-2958 Resignation of director.

(1) A director may resign at any time by giving notice in a record to the limited cooperative association.

(2) A resignation is effective when notice is received by the limited cooperative association unless the notice states a later effective date.

Source: Laws 2007, LB 368, § 58.

21-2959 Removal of director.

The members may remove a director only for cause unless the articles of organization or bylaws provide for removal without cause.

Source: Laws 2007, LB 368, § 59.

21-2960 Suspension of director by board.

(1) The board of directors may suspend a director, if, considering the director's course of conduct and the inadequacy of other available remedies, immediate suspension is necessary for the best interests of the limited cooperative association and the director is engaged in:

(a) Fraudulent conduct with respect to the limited cooperative association or its members;

(b) Gross abuse of the position of the director; or

(c) Intentional infliction of harm on the limited cooperative association.

(2) After suspension, a director may be removed pursuant to section 21-2959.

Source: Laws 2007, LB 368, § 60.

21-2961 Vacancy on board.

(1) Unless the articles of organization or bylaws otherwise provide, a vacancy on the board of directors shall be filled:

(a) By majority vote of the remaining directors until the next annual members' meeting or special members' meeting held for that purpose; and

(b) For the unexpired term by members at the next annual members' meeting or special members' meeting called for that purpose.

(2) If the vacating director was elected by a group or class of members or by group, class, or district:

(a) The appointed director shall be of that group, class, or district; and

(b) The election of the director for the unexpired term shall be conducted in the same manner as would the election for that position without a vacancy.

Source: Laws 2007, LB 368, § 61.

21-2962 Compensation of directors.

Unless the articles of organization or bylaws otherwise provide, the board of directors may fix the remuneration of directors and nondirector committee members.

Source: Laws 2007, LB 368, § 62.

21-2963 Meetings.

(1) The board of directors shall meet at least annually and may hold meetings in or outside this state.

(2) Unless otherwise provided in the articles of organization or bylaws, the board of directors may permit directors to attend board meetings or conduct board meetings through the use of any means of communication, if all directors attending the meeting can communicate with each other during the meeting.

Source: Laws 2007, LB 368, § 63.

21-2964 Action without meeting.

(1) Unless prohibited by the articles of organization or bylaws, any action that may be taken by the board of directors may be taken without a meeting if each director consents to action in a record.

(2) Consent under subsection (1) of this section may be withdrawn by a director in a record at any time before the limited cooperative association receives a record of consent from each director.

(3) The record of consent for any action may specify the effective date or time of the action.

Source: Laws 2007, LB 368, § 64.

21-2965 Meetings and notice.

(1) Unless otherwise provided by the articles of organization or bylaws, the board of directors may establish a time and place for regular board meetings and notice of the time, place, or purpose of those meetings is not required.

(2) Unless otherwise provided by the articles of organization or bylaws, special meetings of the board of directors shall be preceded by at least three days' notice of the time, date, and place of the meeting. The notice shall contain a statement of the purpose of the special meeting and the meeting shall be limited to the matters contained in the statement.

Source: Laws 2007, LB 368, § 65.

21-2966 Waiver of notice of meeting.

(1) Unless otherwise provided in the articles of organization or bylaws, a director may waive any required notice of a meeting of the board of directors in a record before, during, or after the meeting.

(2) Unless otherwise provided in the articles of organization or bylaws, a director's participation in a meeting is waiver of notice of that meeting, unless the director objects to the meeting at the beginning of the meeting or promptly upon the director's arrival at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Source: Laws 2007, LB 368, § 66.

21-2967 Quorum.

(1) Unless otherwise provided in the articles of organization or bylaws, a majority of the fixed number of directors on the board of directors constitutes a quorum for the management of the affairs of the limited cooperative association.

(2) If a quorum is in attendance at the beginning of the meeting, any action taken by the board of directors present is valid even if the withdrawal of directors originally present results in the number of directors being less than the number required for a quorum.

Source: Laws 2007, LB 368, § 67.

21-2968 Voting.

Each director has one vote for purposes of decisions made by the board of directors.

Source: Laws 2007, LB 368, § 68.

21-2969 Committees.

(1) Unless otherwise provided by the articles of organization or bylaws, a board of directors may create one or more committees and appoint one or more individuals to serve on a committee.

(2) Unless otherwise provided by the articles of organization or bylaws, an individual appointed to serve on a committee need not be a director or member of the limited cooperative association. An individual serving on a committee has the same rights, duties, and obligations as a director serving on a committee.

(3) Unless otherwise provided by the articles of organization or bylaws, each committee may exercise the powers as delegated by the board of directors except that no committee may:

(a) Approve allocations or distributions except according to a formula or method prescribed by the board of directors;

(b) Approve or propose to members action requiring approval of members; or

(c) Fill vacancies on the board of directors or any of its committees.

Source: Laws 2007, LB 368, § 69.

21-2970 Standards of conduct and liability.

(1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he or she reasonably believes to be in the best interests of the corporation.

(2) In discharging his or her duties, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(c) A committee of the board of directors of which he or she is not a member, if the director reasonably believes the committee merits confidence.

(3) A director shall not be considered to be acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director shall not be liable for any action taken as a director or any failure to take any action if he or she performed the duties of his or her office in compliance with this section.

Source: Laws 2007, LB 368, § 70.

21-2971 Conflict of interest.

Except as otherwise provided in section 21-2970, the Business Corporation Act governs conflicts of interests between a director or member of a committee of the board of directors and the limited cooperative association.

Source: Laws 2007, LB 368, § 71.

Cross References

Business Corporation Act, see section 21-2001.

21-2972 Right of director to information.

A director may obtain, inspect, and copy all information regarding the state of activities and financial condition of the limited cooperative association and other information regarding the activities of the limited cooperative association reasonably related to the performance of the director's duties as director but not for any other purpose or in any manner that would violate any duty to the limited cooperative association.

Source: Laws 2007, LB 368, § 72.

21-2973 Other considerations of directors.

Unless otherwise provided in the articles of organization or bylaws, a director, in determining the best interests of the limited cooperative association, may consider the interests of employees, customers, and suppliers of the limited cooperative association and of the communities in which the limited cooperative association operates and the long-term and short-term interests of the limited cooperative association and its members.

Source: Laws 2007, LB 368, § 73.

21-2974 Appointment and authority of officers.

(1) A limited cooperative association has the offices provided in its articles of organization or bylaws or established by the board of directors consistent with the articles of organization or bylaws.

(2) The articles of organization or bylaws or the board of directors shall designate one of the officers for preparing all records required by section 21-2910 for the authentication of records.

(3) Officers have the authority and shall perform the duties as the articles of organization or bylaws prescribe or as the board of directors determines is consistent with the articles of organization or bylaws.

(4) The election or appointment of an officer does not of itself create a contract with the officer.

(5) Unless otherwise provided in the articles of organization or bylaws an individual may simultaneously hold more than one office in the limited cooperative association.

Source: Laws 2007, LB 368, § 74.

21-2975 Resignation and removal of officers.

(1) The board of directors may remove an officer at any time with or without cause.

(2) An officer may resign at any time in a record giving notice to the limited cooperative association. The resignation is effective when the notice is given unless the notice specifies a later time.

Source: Laws 2007, LB 368, § 75.

PART 8

INDEMNIFICATION

21-2976 Indemnification.

Indemnification of any individual who has incurred liability, is a party, or is threatened to be made a party because of the performance of duties to, or activity on behalf of, the limited cooperative association is governed by the Business Corporation Act.

Source: Laws 2007, LB 368, § 76.

Cross References

Business Corporation Act, see section 21-2001.

PART 9

CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS

21-2977 Members' contributions.

The articles of organization or bylaws may establish the amount, manner, or method of determining any member contribution requirements for members or may authorize the board of directors to establish the manner and terms of any contributions for members.

Source: Laws 2007, LB 368, § 77.

21-2978 Forms of contribution and valuation.

(1) Unless otherwise provided in the articles of organization or bylaws, the contributions of a member may consist of tangible or intangible property or other benefit to the limited cooperative association, including money, services performed or to be performed, promissory notes, other agreements to contribute cash or property, and contracts to be performed.

(2) The receipt and acceptance of contributions and the valuation of contributions shall be reflected in the limited cooperative association's required records pursuant to section 21-2910.

(3) Unless otherwise provided in the articles of organization or bylaws, the board of directors shall value the contributions received or to be received. The determination by the board of directors on valuation is conclusive for purposes of determining whether the member's contribution obligation has been fully paid.

Source: Laws 2007, LB 368, § 78.

21-2979 Contribution agreements.

(1) A contribution agreement entered into before formation of the limited cooperative association is irrevocable for six months unless:

(a) Otherwise provided by the agreement; or

(b) All parties to the agreement consent to the revocation.

(2) Upon default by a party to a contribution agreement entered into before formation, the limited cooperative association, once formed, may:

(a) Collect the amount owed as any other debt; or

(b) Unless otherwise provided in the agreement, rescind the agreement if the debt remains unpaid more than twenty days after the limited cooperative association demands payment from the party in a record.

Source: Laws 2007, LB 368, § 79.

21-2980 Allocation of profits and losses.

(1) Subject to subsection (2) of this section, the articles of organization or bylaws shall provide for the allocation of net proceeds, savings, margins, profits, and losses between classes or groups of members.

(2) Unless the articles of organization or bylaws otherwise provide, patron members shall be allocated at least fifty percent of the net proceeds, savings, margins, profits, and losses in any fiscal year. The articles of organization or bylaws shall not reduce the percentage allocated to patron members to less than fifteen percent of the net proceeds.

(3) Unless otherwise provided in the articles of organization or bylaws, in order to determine the amount of net proceeds, savings, margins, and profits, the board of directors may set aside a portion of the revenue, whether or not allocated to members, after accounting for other expenses, for purposes of:

(a) Creating or accumulating a capital reserve; and

(b) Creating or accumulating reserves for specific purposes, including expansion and replacement of capital assets and other necessary business purposes.

(4) Subject to subsection (5) of this section and the articles of organization or bylaws, the board of directors shall allocate the amount remaining after the allocations under subsections (1) through (3) of this section:

(a) To patron members annually in accordance with the ratio of each member's patronage during the period to total patronage of all patron members during the period; and

(b) To investor members, if any, in accordance with the ratio of each investor member's limited contribution to the total initial contribution of all investor members.

(5) For purposes of allocation of net proceeds, savings, margins, profits, and losses to patron members, the articles of organization or bylaws may establish allocation units based on function, division, district, department, allocation units, pooling arrangements, members' contributions, or other methods.

Source: Laws 2007, LB 368, § 80.

21-2981 Distributions.

(1) Unless otherwise provided by the articles of organization or bylaws and subject to subsection (2) of this section, the board of directors may authorize, and the limited cooperative association may make, distributions to members.

(2) Unless otherwise provided by the articles of organization or bylaws, distributions to members may be made in the form of cash, capital credits, allocated patronage equities, revolving fund certificates, the limited cooperative association's own securities or other securities, or in any other manner.

Source: Laws 2007, LB 368, § 81.

PART 10

DISSOCIATION

21-2982 Member's dissociation; power of estate of member.

(1) A member does not have a right to withdraw as a member of a limited cooperative association but has the power to withdraw.

(2) Unless otherwise provided by the articles of organization or bylaws, a member is dissociated from a limited cooperative association upon the occurrence of any of the following events:

(a) The limited cooperative association's having notice in a record of the person's express will to withdraw as a member or to withdraw on a later date specified by the person;

(b) An event provided in the articles of organization or bylaws as causing the person's dissociation as a member;

(c) The person's expulsion as a member pursuant to the articles of organization or bylaws;

(d) The person's expulsion as a member by the board of directors if:

(i) It is unlawful to carry on the limited cooperative association's activities with the person as a member;

(ii) Subject to section 21-2947, there has been a transfer of all of the person's financial rights in the limited cooperative association;

(iii) The person is a corporation or association whether or not organized under the Nebraska Limited Cooperative Association Act; and:

(A) The limited cooperative association notifies the person that it will be expelled as a member because it has filed a statement of intent to dissolve or

articles of dissolution, it has been administratively or judicially dissolved, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its organization; and

(B) Within ninety days after the person receives the notification described in subdivision (2)(d)(iii)(A) of this section, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(iv) The person is a limited liability company, association, whether or not organized under the act, or partnership that has been dissolved and whose business is being wound up;

(e) In the case of a person who is an individual, the person's death;

(f) In the case of a person that is a trust, distribution of the trust's entire financial rights in the limited cooperative association, but not merely by the substitution of a successor trustee;

(g) In the case of a person that is an estate, distribution of the estate's entire financial interest in the limited cooperative association, but not merely by the substitution of a successor personal representative;

(h) Termination of a member that is not an individual, partnership, limited liability company, limited cooperative association, whether or not organized under the act, corporation, trust, or estate; or

(i) The limited cooperative association's participation in a merger, if, under the plan of merger as approved under section 21-29,122, the person ceases to be a member.

Source: Laws 2007, LB 368, § 82.

21-2983 Effect of dissociation as member.

(1) Upon a person's dissociation as a member:

(a) A person dissociated pursuant to section 21-2982 does not have further rights as a member; and

(b) Subject to sections 21-2947 and 21-2948, any financial rights owned by the person in the person's capacity as a member immediately before dissociation are owned by the person as a transferee who is not admitted as a member after dissociation.

(2) A person's dissociation as a member does not of itself discharge the person from any obligation to the limited cooperative association which the person incurred while a member.

Source: Laws 2007, LB 368, § 83.

PART 11

DISSOLUTION

21-2984 Dissolution.

Except as otherwise provided in sections 21-2986 and 21-2987, a limited cooperative association is dissolved and its activities shall be wound up only upon the occurrence of any of the following:

(1) The happening of an event or the coming of a time specified in the articles of organization;

(2) The action of the organizers, board of directors, or members under sections 21-2986 and 21-2987;

(3) The passage of ninety days after the dissociation of a member, resulting in the limited cooperative association having less than two members, unless before the end of the period the limited cooperative association admits at least one member in accordance with its articles of organization or bylaws; or

(4) The filing of a declaration by the Secretary of State under section 21-2994.

Source: Laws 2007, LB 368, § 84.

21-2985 Judicial dissolution.

A district court may dissolve a limited cooperative association or order any action that under the circumstances is appropriate and equitable:

(1) In a proceeding by the Attorney General, if it is established that:

(a) The limited cooperative association obtained its articles of organization through fraud; or

(b) The limited cooperative association has continued to exceed or abuse the authority conferred upon it by law;

(2) In a proceeding by a member, if it is established that:

(a) The directors are deadlocked in the management of the limited cooperative association's affairs, the members are unable to break the deadlock, and irreparable injury to the limited cooperative association is occurring or is threatened because of the deadlock;

(b) The directors or those in control of the limited cooperative association have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(c) The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual members' meetings, to elect successors to directors whose terms have expired; or

(d) The assets of the limited cooperative association are being misapplied or wasted; or

(3) In a proceeding by the limited cooperative association to have its voluntary dissolution continued under judicial supervision.

Source: Laws 2007, LB 368, § 85.

21-2986 Voluntary dissolution before commencement of activity.

A majority of the organizers or initial directors of a limited cooperative association that has not yet begun activity or the conduct of its affairs may dissolve the limited cooperative association.

Source: Laws 2007, LB 368, § 86.

21-2987 Voluntary dissolution by the board and members.

In order to voluntarily dissolve:

(1) A resolution to dissolve shall be approved by a majority vote of the board of directors unless a greater vote is required by the articles of organization or bylaws;

(2) The board of directors shall mail or otherwise transmit or deliver in a record to each member:

(a) The resolution required by subdivision (1) of this section;

(b) A recommendation that the members vote in favor of the resolution, unless the board determines because of conflict of interest or other special circumstances it should not make such a recommendation;

(c) If the board makes no recommendation, the basis of that decision; and

(d) A notice of the meeting in the same manner as a special members' meeting;

(3) Subject to section 21-2939, the resolution to dissolve shall be approved by at least a two-thirds vote of patron members voting at the meeting and at least two-thirds vote of investor members voting at the meeting; and

(4) Unless otherwise provided in the resolution, the limited cooperative association is dissolved upon approval under subdivision (3) of this section.

Source: Laws 2007, LB 368, § 87.

21-2988 Articles of dissolution.

(1) A limited cooperative association that has dissolved or is about to dissolve shall deliver to the Secretary of State for filing articles of dissolution that state:

(a) The name of the limited cooperative association;

(b) The date that the limited cooperative association dissolved or when it will dissolve; and

(c) Any other information it deems relevant.

(2) A person has notice of a limited cooperative association's dissolution the later of ninety days after the filing of the statement or the effective date under subdivision (1)(b) of this section.

Source: Laws 2007, LB 368, § 88.

21-2989 Winding up of activities.

(1) A limited cooperative association continues after dissolution only for purposes of winding up its activities.

(2) In winding up its activities, the limited cooperative association shall:

(a) Discharge its liabilities, settle and close its activities, and marshal and distribute its assets; and

(b) File articles of dissolution indicating it is winding up, preserve the limited cooperative association or its property as a going concern for a reasonable time, prosecute and defend actions and proceedings, transfer limited cooperative association property, settle disputes by mediation or arbitration, and perform other necessary acts.

(3) On the application of the limited cooperative association, any member, or a holder of financial rights the district court may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited cooperative association's activities, if:

(a) After a reasonable time, the limited cooperative association has not executed winding up under subsection (2) of this section; or

(b) The applicant establishes other good cause.

Source: Laws 2007, LB 368, § 89.

21-2990 Distribution of assets in winding up limited cooperative association.

(1) In winding up a limited cooperative association's business, unless otherwise stated in the articles of organization or bylaws, the assets of the limited cooperative association shall be applied to discharge its obligations to creditors, including members who are creditors. Any remaining assets shall be applied to pay in money the net amount distributable to members in accordance with their right to distributions under subsection (2) of this section.

(2) Each member is entitled to a distribution from the limited cooperative association of any remaining assets in the proportion of the member's financial interests to the total financial interests of members of the limited cooperative association after all other obligations are satisfied.

Source: Laws 2007, LB 368, § 90.

21-2991 Known claims against dissolved limited cooperative association.

(1) A dissolved limited cooperative association may dispose of the known claims against it by following the procedure described in subsection (2) of this section.

(2) A dissolved limited cooperative association may notify its known claimants of the dissolution in a record. The notice shall:

(a) Specify the information required to be included in a claim;

(b) Provide a mailing address to which the claim is to be sent;

(c) State the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the notice is received by the claimant; and

(d) State that the claim will be barred if not received by the deadline.

(3) A claim against a dissolved limited cooperative association is barred if the requirements of subsection (2) of this section are met and:

(a) The limited cooperative association has not been notified in a record of the claim; or

(b) In the case of a claim that is timely received but rejected by the dissolved limited cooperative association, the claimant does not commence an action to enforce the claim against the limited cooperative association within ninety days after the receipt of the notice of the rejection, if the notice of rejection states that the claim will be barred unless brought against the limited cooperative association within ninety days after receipt of the notice of rejection.

(4) This section does not apply to a claim based on an event occurring after the date of dissolution or a liability that is contingent on that date.

Source: Laws 2007, LB 368, § 91.

21-2992 Other claims against dissolved limited cooperative association.

(1) A dissolved limited cooperative association shall publish notice of its dissolution and request persons having claims against the limited cooperative association to present them in accordance with the notice.

(2) The notice shall:

(a) Be published at least once in a newspaper of general circulation in the county in which the dissolved limited cooperative association's principal office is located or, if it has none in this state, in the county in which the limited cooperative association's designated office is or was last located;

(b) Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and

(c) State that a claim against the limited cooperative association is barred unless an action to enforce the claim is commenced within three years after publication of the notice.

(3) If a dissolved limited cooperative association publishes a notice in accordance with subsection (2) of this section, the claim of each of the following claimants is barred, unless the claimant commences an action to enforce the claim against the dissolved limited cooperative association within three years after the publication date of the notice:

(a) A claimant that did not receive notice in a record under section 21-2991;

(b) A claimant whose claim was timely sent to the dissolved limited cooperative association but not acted on; and

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim not barred under this section may be enforced:

(a) Against the dissolved limited cooperative association, to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against a member or transferee of financial rights to the extent of that person's proportionate share of the claim or the limited cooperative association's assets distributed to the member or transferee in liquidation, whichever is less, but a person's total liability for all claims under this subsection does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited cooperative association.

Source: Laws 2007, LB 368, § 92.

21-2993 Court proceeding.

(1) A dissolved limited cooperative association that has published a notice under section 21-2991 or 21-2992 may file an application with the district court where the dissolved limited cooperative association's principal office is located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved limited cooperative association or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved limited cooperative association, are reasonably estimated to arise after the effective date of dissolution.

(2) Notice of the proceeding shall be given by the dissolved limited cooperative association to each known claimant holding a contingent claim within ten days after the filing of the application of the limited cooperative association.

(3) The court may appoint a receiver to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such receiver, including all reasonable expert witness fees, shall be paid by the dissolved limited cooperative association.

(4) Provision by the dissolved limited cooperative association for security in the amount and the form ordered by the court under section 21-2992 shall satisfy the dissolved limited cooperative association's obligations with respect to claims that are contingent, have not been made known to the dissolved limited cooperative association, or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a member who received a distribution.

Source: Laws 2007, LB 368, § 93.

21-2994 Administrative dissolution.

(1) The Secretary of State may dissolve a limited cooperative association administratively if the limited cooperative association does not, within sixty days after the due date:

(a) Pay any fee, tax, or penalty due to the Secretary of State under the Nebraska Limited Cooperative Association Act or other law;

(b) Deliver its biennial report to the Secretary of State;

(c) Have a registered agent or registered office in this state; or

(d) Notify the Secretary of State that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

(2) If the Secretary of State determines that a ground exists for administratively dissolving a limited cooperative association, the Secretary of State shall file a record of the determination and serve the limited cooperative association with a copy of the filed record.

(3) If, within sixty days after service of the copy, the limited cooperative association does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each uncorrected ground determined by the Secretary of State does not exist, the Secretary of State shall administratively dissolve the limited cooperative association by preparing, signing, and filing a declaration of dissolution that states the grounds for dissolution. The Secretary of State shall serve the limited cooperative association with a copy of the filed declaration.

(4) A limited cooperative association administratively dissolved continues its existence but may carry on only activities necessary to wind up its activities and liquidate its assets under sections 21-2989 and 21-2990 and to notify claimants under sections 21-2991 and 21-2992.

(5) The administrative dissolution of a limited cooperative association does not terminate the authority of its agent for service of process.

Source: Laws 2007, LB 368, § 94.

21-2995 Reinstatement following administrative dissolution.

(1) A limited cooperative association that has been administratively dissolved may apply to the Secretary of State for reinstatement. The application shall be delivered to the Secretary of State for filing and state:

(a) The name of the limited cooperative association and the effective date of its administrative dissolution;

(b) That the grounds for dissolution either did not exist or have been eliminated; and

(c) That the limited cooperative association's name satisfies the requirements of sections 21-2906 to 21-2908.

(2) If the Secretary of State determines that (a) the application contains the information required by subsection (1) of this section and that the information is correct and (b) the limited cooperative association has paid to the Secretary of State all delinquent occupation taxes and has forwarded to the Secretary of State a properly executed and signed biennial report for the current year, the Secretary of State shall:

(a) Prepare a declaration of reinstatement that states this determination;

(b) Sign and file the original of the declaration of reinstatement; and

(c) Serve the limited cooperative association with a copy.

(3) When reinstatement becomes effective it relates back to and takes effect as of the effective date of the administrative dissolution and the limited cooperative association may resume or continue its activities as if the administrative dissolution had never occurred.

Source: Laws 2007, LB 368, § 95.

21-2996 Denial of reinstatement; appeal.

(1) If the Secretary of State denies a limited cooperative association's application for reinstatement following administrative dissolution, the Secretary of State shall prepare, sign, and file a notice that explains the reason or reasons for denial and serve the limited cooperative association with a copy of the notice.

(2) Within thirty days after service of the notice of denial, the limited cooperative association may appeal the denial of reinstatement by petitioning the district court to set aside the dissolution. The petition shall be served on the Secretary of State and contain a copy of the Secretary of State's declaration of dissolution, the limited cooperative association's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the dissolved limited cooperative association or may take other action the court considers appropriate.

Source: Laws 2007, LB 368, § 96.

PART 12

ACTIONS BY MEMBERS

21-2997 Direct action by member.

(1) Subject to subsection (2) of this section, a member may maintain a direct action against the limited cooperative association, an officer, or a director to enforce the rights and otherwise protect the interests of the member, including rights and interests under the articles of organization or bylaws.

(2) A member maintaining a direct action under this section is required to plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited cooperative association.

Source: Laws 2007, LB 368, § 97.

21-2998 Derivative action.

A member may maintain a derivative action to enforce a right of a limited cooperative association if the member adequately represents the interests of the limited cooperative association and if:

(1) The member first makes a demand on the limited cooperative association, requesting that it bring an action to enforce the right, and the limited cooperative association does not bring the action within a reasonable time; and

(2) Ninety days have expired after the date the demand was made unless the member has earlier been notified that the demand has been rejected by the limited cooperative association or unless irreparable injury to the limited cooperative association would result by waiting for the expiration of the time.

Source: Laws 2007, LB 368, § 98.

21-2999 Proper plaintiff.

A derivative action may be maintained only by a person that is a member at the time the action is commenced and:

(1) That was a member when the conduct giving rise to the action occurred; or

(2) Whose status as a member devolved upon the person by operation of law from a person that was a member at the time of the conduct.

Source: Laws 2007, LB 368, § 99.

21-29,100 Complaint.

In a derivative action, the complaint shall state with particularity:

(1) The date and content of the plaintiff's demand and the limited cooperative association's response to the demand; and

(2) If ninety days have not expired under subdivision (2) of section 21-2998, that irreparable injury to the limited cooperative association would result by waiting for the expiration of the time.

Source: Laws 2007, LB 368, § 100.

21-29,101 Proceeds and expenses.

(1) Except as otherwise provided in subsection (2) of this section:

(a) Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited cooperative association and not to the derivative plaintiff; and

(b) If the derivative plaintiff receives any proceeds, the derivative plaintiff shall immediately remit them to the limited cooperative association.

(2) If a derivative action is successful, in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from the recovery of the limited cooperative association.

Source: Laws 2007, LB 368, § 101.

PART 13

FOREIGN COOPERATIVES

21-29,102 Governing law.

(1) The laws of the state or other jurisdiction under which a foreign limited cooperative association is organized govern relations among the members of the foreign limited cooperative association and between the members and the foreign limited cooperative association.

(2) A foreign limited cooperative association shall not be denied a certificate of authority by reason of any difference between the laws of the jurisdiction under which the foreign limited cooperative association is organized and the laws of this state.

(3) A certificate of authority does not authorize a foreign limited cooperative association to engage in any activity or exercise any power that a limited cooperative association cannot engage in or exercise in this state.

Source: Laws 2007, LB 368, § 102.

21-29,103 Application for certificate of authority.

(1) A foreign limited cooperative association may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application shall state:

(a) The name of the foreign limited cooperative association and, if the name does not comply with section 21-2908, an alternative name adopted pursuant to section 21-29,106;

(b) The name of the state or other jurisdiction under whose law the foreign limited cooperative association is organized;

(c) The street and mailing addresses of the foreign limited cooperative association's designated office and, if the laws of the jurisdiction under which the foreign limited cooperative association is organized require the foreign limited cooperative association to maintain an office in that jurisdiction, the street and mailing addresses of the required office;

(d) The name and street and mailing addresses of the foreign limited cooperative association's agent for service of process in this state; and

(e) The name and street and mailing addresses of each of the foreign limited cooperative association's current directors and officers.

(2) A foreign limited cooperative association shall deliver with the completed application a certificate of good standing or existence or a similar record signed by the Secretary of State or other official having custody of the foreign limited cooperative association's publicly filed records in the state or other jurisdiction under whose law the foreign limited cooperative association is organized.

Source: Laws 2007, LB 368, § 103.

21-29,104 Activities not constituting transacting business.

(1) Activities of a foreign limited cooperative association which do not constitute transacting business in this state within the meaning of this section include:

(a) Maintaining, defending, and settling an action or proceeding;

(b) Holding meetings of its members or carrying on any other activity concerning its internal affairs;

(c) Maintaining accounts in financial institutions;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited cooperative association's own securities or maintaining trustees or depositories with respect to those securities;

(e) Selling through independent contractors;

(f) Soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) Creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

(h) Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts and holding, protecting, and maintaining property so acquired;

(i) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions of a like manner; and

(j) Transacting business in interstate commerce.

(2) For purposes of this section, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (1) of this section, constitutes transacting business in this state.

(3) This section does not apply in determining the contacts or activities that may subject a foreign limited cooperative association to service of process, taxation, or regulation under any other law of this state.

Source: Laws 2007, LB 368, § 104.

21-29,105 Filing of certificate of authority.

Unless the Secretary of State determines that an application for a certificate of authority does not comply with the filing requirements of the Nebraska Limited Cooperative Association Act, the Secretary of State, upon payment of all filing fees, shall file the application, prepare, sign, and file a certificate of authority to transact business in this state, and send a copy of the filed certificate, together with a receipt for the fees, to the foreign limited cooperative association or its representative.

Source: Laws 2007, LB 368, § 105.

21-29,106 Noncomplying name of foreign cooperative.

(1) A foreign limited cooperative association whose name does not comply with section 21-2908 shall not obtain a certificate of authority until it adopts, for purposes of transacting business in this state, an alternative name that complies with such section. A foreign limited cooperative association that adopts an alternative name under this subsection and then obtains a certificate of authority with the name need not comply with sections 21-2907 and 21-2908. After obtaining a certificate of authority with an alternative name, a foreign limited cooperative association shall transact business in this state under the name unless the foreign limited cooperative association is authorized under sections 21-2907 and 21-2908 to transact business in this state under another name.

(2) If a foreign limited cooperative association authorized to transact business in this state changes its name to one that does not comply with sections

21-2907 and 21-2908, it shall not thereafter transact business in this state until it complies with subsection (1) of this section and obtains an amended certificate of authority.

Source: Laws 2007, LB 368, § 106.

21-29,107 Revocation of certificate of authority.

(1) A certificate of authority of a foreign limited cooperative association to transact business in this state may be revoked by the Secretary of State in the manner provided in subsections (2) and (3) of this section if the foreign limited cooperative association does not:

(a) Pay, within sixty days after the due date, any fee, tax, or penalty due to the Secretary of State under the Nebraska Limited Cooperative Association Act or other law;

(b) Deliver, within sixty days after the due date, its biennial report required under section 21-2994;

(c) Appoint and maintain an agent for service of process as required by section 21-29,103; or

(d) Deliver for filing a statement of a change under section 21-2914 within thirty days after a change has occurred in the name or address of the agent.

(2) To revoke a certificate of authority, the Secretary of State shall prepare, sign, and file a certificate of revocation and send a copy to the foreign limited cooperative association's registered agent for service of process in this state, or if the foreign limited cooperative association does not appoint and maintain an agent for service of process in this state, to the foreign limited cooperative association's designated office. The notice shall state:

(a) The revocation's effective date, which shall be at least sixty days after the date the Secretary of State sends the copy; and

(b) The foreign limited cooperative association's noncompliance with subsection (1) of this section which is the reason for the revocation.

(3) The authority of the foreign limited cooperative association to transact business in this state ceases on the effective date of the certificate of revocation unless before that date the foreign limited cooperative association cures each failure to comply with subsection (1) of this section stated in the notice. If the foreign limited cooperative association cures the failures, the Secretary of State shall so indicate on the filed notice.

Source: Laws 2007, LB 368, § 107.

21-29,108 Cancellation of certificate of authority; effect of failure to have certificate.

(1) To cancel its certificate of authority to transact business in this state, a foreign limited cooperative association shall deliver to the Secretary of State for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under section 21-2919.

(2) A foreign limited cooperative association transacting business in this state shall not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

(3) The failure of a foreign limited cooperative association to have a certificate of authority to transact business in this state does not impair the validity of

a contract or act of the foreign limited cooperative association or prevent the foreign limited cooperative association from defending an action or proceeding in this state.

(4) A member of a foreign limited cooperative association is not liable for the obligations of the foreign limited cooperative association solely by reason of the foreign limited cooperative association's having transacted business in this state without a certificate of authority.

(5) If a foreign limited cooperative association transacts business in this state without a certificate of authority or cancels its certificate of authority, it may be served in accordance with section 21-2916 for rights of action arising out of the transaction of business in this state.

Source: Laws 2007, LB 368, § 108.

21-29,109 Action by Attorney General.

The Attorney General may maintain an action to restrain a foreign limited cooperative association from transacting business in this state in violation of the Nebraska Limited Cooperative Association Act.

Source: Laws 2007, LB 368, § 109.

PART 14

AMENDMENT OF ARTICLES OF ORGANIZATION OR BYLAWS

21-29,110 Authority to amend articles of organization or bylaws.

(1) A limited cooperative association may amend its articles of organization or bylaws.

(2) A member of a limited cooperative association does not have vested rights in any provision in the articles of organization or bylaws.

Source: Laws 2007, LB 368, § 110.

21-29,111 Notice and action on amendment of articles of organization or bylaws.

To amend its articles of organization or bylaws:

(1) A proposed amendment shall be approved by a majority vote of the board of directors unless a greater vote is required by the articles of organization or bylaws; and

(2) The board of directors shall mail or otherwise transmit or deliver in a record to each member:

(a) The proposed amendment;

(b) A recommendation that the members approve the amendment unless the board determines because of conflict of interest or other special circumstances it should not make such a recommendation;

(c) If the board makes no recommendation, the basis of that decision;

(d) Any condition of its submission of the amendment to the members; and

(e) Notice of the meeting in the same manner as a special members' meeting.

Source: Laws 2007, LB 368, § 111.

21-29,112 Change to amendment of articles of organization or bylaws at meeting.

(1) No substantive change to the proposed amendment of the articles of organization or bylaws shall be made at the members' meeting at which the vote occurs.

(2) Subject to subsection (1) of this section, any amendment of the amendment need not be separately voted upon by the board of directors.

(3) The vote to adopt an amendment to the amendment is the same as that required to pass the proposed amendment.

Source: Laws 2007, LB 368, § 112.

21-29,113 Approval of amendment.

(1) An amendment to the articles of organization shall be approved by at least a two-thirds vote of members voting at the meeting.

(2) An amendment to the bylaws shall be approved by at least a majority vote of members voting at the meeting and by at least a majority of investor members voting at the meeting.

Source: Laws 2007, LB 368, § 113.

21-29,114 Vote affecting group, class, or district of members.

Members shall vote as a separate group, if a proposed amendment affects the group, class, or district of members in:

(1) The equity capital structure of the limited cooperative association, including the rights of the limited cooperative association's members to share in profits or distributions, and the relative rights, preferences, and restrictions granted to or imposed upon one or more districts, classes, or voting groups of similarly situated members;

(2) The transferability of members' interests;

(3) The manner or method of allocation of profits or losses among members;

(4) The quorum for a meeting and rights of voting and governance not including the modification of district boundaries which may, unless otherwise provided in the articles of organization or operating agreement, be determined by the board of directors; or

(5) The terms for admission of new members.

Source: Laws 2007, LB 368, § 114.

21-29,115 Emergency bylaws; procedure for adoption.

(1) Unless the articles of organization provide otherwise, the board of directors may adopt bylaws to be effective only in an emergency described in subsection (4) of this section. The emergency bylaws may be amended or repealed by the members and may make all provisions necessary for managing the limited cooperative association during the emergency, including:

(a) Procedures for calling a meeting of the board of directors;

(b) Quorum requirements for the meeting; and

(c) Designation of additional or substitute directors.

(2) The regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(3) Action taken by the limited cooperative association in good faith in accordance with the emergency bylaws:

(a) Binds the limited cooperative association; and

(b) May not be used to impose liability on a director, officer, employee, or agent of the limited cooperative association.

(4) An emergency exists for purposes of this section if a quorum of the board of directors cannot readily be assembled because of a catastrophic event.

Source: Laws 2007, LB 368, § 115.

21-29,116 Amendment or restatement of articles of organization.

(1) To amend or restate its articles of organization, a limited cooperative association shall deliver to the Secretary of State for filing an amendment or restatement of the articles of organization stating:

(a) The name of the limited cooperative association;

(b) The date of filing of its initial articles of organization; and

(c) The changes the amendment makes to the articles of organization as most recently amended or restated.

(2) A limited cooperative association shall promptly deliver to the Secretary of State for filing an amendment to the articles of organization to reflect the appointment of a person to wind up the limited cooperative association's activities under sections 21-2989 and 21-2990.

(3) An organizer that knows that any information in filed articles of organization was false when the articles were filed or has become false due to changed circumstances shall promptly:

(a) Cause the articles to be amended; and

(b) Deliver to the Secretary of State an amendment for filing.

(4) Articles of organization may be amended at any time for any other proper purpose as determined by the limited cooperative association.

(5) Restated articles of organization shall be delivered to the Secretary of State for filing in the same manner as an amendment.

(6) Subject to section 21-2919, an amendment or restated article is effective when filed by the Secretary of State.

Source: Laws 2007, LB 368, § 116.

PART 15

CONVERSION, MERGER, AND CONSOLIDATION

21-29,117 Conversion, merger, and consolidation; terms, defined.

For purposes of sections 21-29,117 to 21-29,128:

(1) Constituent limited cooperative association means a limited cooperative association that is a party to a merger;

(2) Constituent organization means an organization that is a party to a merger;

(3) Converted organization means the organization into which a converting organization converts pursuant to sections 21-29,118 to 21-29,121;

(4) Converting limited cooperative association means a converting organization that is a limited cooperative association;

(5) Converting organization means an organization that converts to another organization pursuant to section 21-29,118;

(6) Governing statute of an organization means the statute that governs the organization's internal affairs;

(7) Organization means a limited cooperative association, limited cooperative association governed by a law other than the Nebraska Limited Cooperative Association Act, a general partnership, a limited liability partnership, a limited partnership, a limited liability company, a business trust, a corporation, or any other person having a governing statute. The term includes domestic and foreign organizations whether or not organized for profit;

(8) Personal liability means personal liability for a debt, liability, or other obligation of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(a) By the organization's governing statute solely by reason of co-owning, having an interest in, or being a member of the organization; or

(b) By the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one or more specified persons liable for all or for specified debts, liabilities, and other obligations of the organization solely by reason of co-owning, having an interest in, or being a member of the organization; and

(9) Surviving organization means an organization into which one or more other organizations are merged. A surviving organization may exist before the merger or be created by the merger.

Source: Laws 2007, LB 368, § 117.

21-29,118 Conversion.

(1) An organization other than a limited cooperative association may convert to a limited cooperative association and a limited cooperative association may convert to another organization pursuant to this section and a plan of conversion, if:

(a) The other organization's governing statute authorizes the conversion;

(b) The conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(c) The other organization complies with its governing statute in effecting the conversion.

(2) A plan of conversion shall be in a record and shall include:

(a) The name and form of the organization before conversion;

(b) The name and form of the organization after conversion;

(c) The terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and

(d) The organizational documents of the converted organization.

Source: Laws 2007, LB 368, § 118.

21-29,119 Action on plan of conversion by converting limited cooperative association.

(1) A plan of conversion shall be consented to by at least two-thirds vote of patron members voting under section 21-2939 and by at least two-thirds vote of investor members, if any, voting under section 21-2942. If, as a result of the conversion, any member of the limited cooperative association has personal liability, consent of that member in a record shall be required.

(2) Subject to any contractual rights, after a conversion is approved, and at any time before a filing is made under section 21-29,120, a converting limited cooperative association may amend the plan or abandon the planned conversion:

(a) As provided in the plan; and

(b) Except as prohibited by the plan, by the same consent as required to approve the plan.

Source: Laws 2007, LB 368, § 119.

21-29,120 Filings required for conversion; effective date.

(1) After a plan of conversion is approved:

(a) A converting limited cooperative association shall deliver to the Secretary of State for filing articles of conversion, which shall include:

(i) A statement that the limited cooperative association has been converted into another organization;

(ii) The name and form of the organization and the jurisdiction of its governing statute;

(iii) The date the conversion is effective under the governing statute of the converted organization;

(iv) A statement that the conversion was approved as required by the Nebraska Limited Cooperative Association Act;

(v) A statement that the conversion was approved as required by the governing statute of the converted organization; and

(vi) If the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office which may be used for the purposes of section 21-2916; and

(b) If the converting organization is not a converting limited cooperative association, the converting organization shall deliver to the Secretary of State for filing articles of organization, which shall include, in addition to the information required by section 21-2916:

(i) A statement that the limited cooperative association was converted from another organization;

(ii) The name and form of the organization and the jurisdiction of its governing statute; and

(iii) A statement that the conversion was approved in a manner that complied with the organization's governing statute.

(2) A conversion becomes effective:

(a) If the converted organization is a limited cooperative association, when the certificate of limited partnership takes effect; and

(b) If the converted organization is not a limited cooperative association, as provided by the governing statute of the converted organization.

Source: Laws 2007, LB 368, § 120.

21-29,121 Effect of conversion.

(1) An organization that has been converted pursuant to sections 21-29,117 to 21-29,121 is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) All property owned by the converting organization remains vested in the converted organization;

(b) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;

(c) An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(d) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

(e) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(f) Except as otherwise agreed, the conversion does not dissolve a converting limited cooperative association for the purposes of section 21-2987.

(3) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited cooperative association if, before the conversion, the converting limited cooperative association was subject to suit in this state on the obligation. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the Secretary of State as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the Secretary of State under this subsection is made in the same manner and with the same consequences as in sections 21-2913 and 21-2916.

Source: Laws 2007, LB 368, § 121.

21-29,122 Merger.

(1) A limited cooperative association may merge with one or more other constituent organizations pursuant to this section and a plan of merger, if:

(a) The governing statute of each of the other organizations authorizes the merger;

(b) The merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and

(c) Each of the other organizations complies with its governing statute in effecting the merger.

(2) A plan of merger shall be in a record and shall include:

(a) The name and form of each constituent organization;

(b) The name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

(c) The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

(d) If the surviving organization is to be created by the merger, the surviving organization's organizational documents;

(e) If the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents; and

(f) If a member of a constituent limited cooperative association will have personal liability with respect to a surviving organization, the identity by descriptive class or other reasonable manner of the member.

Source: Laws 2007, LB 368, § 122.

21-29,123 Notice and action on plan of merger by constituent limited cooperative association.

(1) Unless otherwise provided in the articles of organization or bylaws, the plan of merger shall be approved by a majority vote of the board of directors.

(2) The board of directors shall mail or otherwise transmit or deliver in a record to each member:

(a) The plan of merger;

(b) A recommendation that the members approve the plan of merger unless the board makes a determination because of conflicts of interest or other special circumstances that it should not make such a recommendation;

(c) If the board makes no recommendation, the basis for that decision;

(d) Any condition of its submission of the plan of merger to the members; and

(e) Notice of the meeting in the same manner as a special members' meeting.

Source: Laws 2007, LB 368, § 123.

21-29,124 Approval or abandonment of merger by members of constituent limited cooperative association.

(1) Unless the articles of organization or bylaws provide for a greater quorum and subject to section 21-2939, a plan of merger shall be approved by at least a two-thirds vote of patron members voting under section 21-2939 and by at least a two-thirds vote of investor members, if any, voting under section 21-2942.

(2) Subject to any contractual rights, after a merger is approved, and at any time before a filing is made under section 21-29,126, a constituent limited cooperative association may amend the plan of merger or abandon the planned merger:

(a) As provided in the plan; and

(b) Except as prohibited by the plan, with the same consent as was required to approve the plan.

Source: Laws 2007, LB 368, § 124.

21-29,125 Merger with subsidiary.

(1) Unless the articles of organization or bylaws of the limited cooperative association or the organic law or articles of organization or bylaws of the other organization otherwise provide, a limited cooperative association that owns at least ninety percent of each class of the voting power of a subsidiary organization may merge the subsidiary into itself or into another subsidiary.

(2) The limited cooperative association owning at least ninety percent of the subsidiary organization before the merger shall notify each other owner of the subsidiary, if any, of the merger within ten days after the effective date of the merger.

Source: Laws 2007, LB 368, § 125.

21-29,126 Filings required for merger; effective date.

(1) After each constituent organization has approved a merger, articles of merger shall be signed on behalf of each other preexisting constituent organization by an authorized representative.

(2) The articles of merger shall include:

(a) The name and form of each constituent organization and the jurisdiction of its governing statute;

(b) The name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect;

(c) The date the merger is effective under the governing statute of the surviving organization;

(d) If the surviving organization is to be created by the merger:

(i) If it will be a limited cooperative association, the limited cooperative association's articles of organization; or

(ii) If it will be an organization other than a limited cooperative association, the organizational document that creates the organization;

(e) If the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization;

(f) A statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(g) If the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing addresses of an office which the Secretary of State may use for the purposes of service of process; and

(h) Any additional information required by the governing statute of any constituent organization.

(3) Each constituent limited cooperative association shall deliver the articles of merger for filing in the office of the Secretary of State.

(4) A merger becomes effective under this section:

(a) If the surviving organization is a limited cooperative association, upon the later of:

(i) Compliance with subsection (3) of this section; or

(ii) Subject to section 21-2919, as specified in the articles of merger; or

(b) If the surviving organization is not a limited cooperative association, as provided by the governing statute of the surviving organization.

Source: Laws 2007, LB 368, § 126.

21-29,127 Effect of merger.

When a merger becomes effective:

(1) The surviving organization continues or comes into existence;

(2) Each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(3) All property owned by each constituent organization that ceases to exist vests in the surviving organization;

(4) All debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;

(5) An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

(6) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) Except as otherwise provided in the plan of merger, the terms and conditions of the plan take effect;

(8) Except as otherwise agreed, if a constituent limited cooperative association ceases to exist, the merger does not dissolve the limited cooperative association for purposes of section 21-2987;

(9) If the surviving organization is created by the merger:

(a) If it is a limited cooperative association, the articles of organization become effective; or

(b) If it is an organization other than a limited cooperative association, the organizational document that creates the organization becomes effective; and

(10) If the surviving organization exists before the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

Source: Laws 2007, LB 368, § 127.

21-29,128 Consolidation.

(1) The limited cooperative associations may agree to substitute the word consolidation for the term merger pursuant to this section if:

(a) Each constituent organization is a limited cooperative association or its governing statute expressly provides for a consolidation; and

(b) The surviving organization is a limited cooperative association or its governing statute expressly provides for a consolidation.

(2) All provisions governing mergers or using the term merger in the Nebraska Limited Cooperative Association Act shall apply equally to mergers that the constituent organizations choose to name consolidations under subsection (1) of this section.

Source: Laws 2007, LB 368, § 128.

PART 16

DISPOSITION OF ASSETS

21-29,129 Disposition of assets.

Member approval by at least two-thirds of the patron members voting under section 21-2939 and by at least a two-thirds vote of the investor members, if voting, under section 21-2942, is required for a limited cooperative association to sell, lease, exchange, or otherwise dispose of all or substantially all of the assets of the limited cooperative association.

Source: Laws 2007, LB 368, § 129.

21-29,130 Notice and action on disposition of assets.

To dispose of assets subject to section 21-29,129:

(1) The proposed disposition shall be approved by a majority vote of the board of directors unless a greater vote is required by the articles of organization or bylaws; and

(2) The board of directors shall mail or otherwise transmit or deliver in a record to each member notice of a special meeting of the members as required by section 21-2935 that sets forth:

(a) The terms of the proposed disposition;

(b) A recommendation that the members approve the disposition unless the board determines because of conflict of interest or other special circumstances it should not make such a recommendation;

(c) If the board makes no recommendation, the basis of that decision;

(d) Any condition of its submission of the proposed disposition to the members; and

(e) Notice of the meeting in the same manner as a special members' meeting under sections 21-2935 and 21-2936.

Source: Laws 2007, LB 368, § 130.

21-29,131 Vote on disposition of assets.

Disposition of assets subject to section 21-29,129 shall be consented to by:

(1) At least two-thirds vote of patron members voting under section 21-2939; and

(2) At least a two-thirds vote of investor members, if any, under section 21-2942.

Source: Laws 2007, LB 368, § 131.

PART 17

MISCELLANEOUS PROVISIONS

21-29,132 Exemption from Securities Act of Nebraska.

Member interests offered or sold by a limited cooperative association are exempt from the Securities Act of Nebraska to the extent interests offered or

sold by other types of organizations are exempt under subdivision (15) of section 8-1111.

Source: Laws 2007, LB 368, § 132.

21-29,133 Immunities, rights, and privileges.

Limited cooperative associations have the same immunities, rights, and privileges provided other types of associations formed under other laws of this state and shall be exempt from those laws to the same extent, but only to the same extent, as those entities organized under the Nonstock Cooperative Marketing Act or sections 21-1301 to 21-1339 are exempt.

Source: Laws 2007, LB 368, § 133.

Cross References

Nonstock Cooperative Marketing Act, see section 21-1401.

21-29,134 Secretary of State; powers.

The Secretary of State shall have all powers reasonably necessary to perform the duties required of him or her under the Nebraska Limited Cooperative Association Act.

Source: Laws 2007, LB 368, § 134.

CHAPTER 22
COUNTIES

Article.
1. Names and Boundaries of Counties. 22-101 to 22-198.
2. Formation of New Counties. 22-201 to 22-221.
3. Relocation of County Seat. 22-301 to 22-303.
4. Consolidation of Counties and Offices. 22-401 to 22-418.

Cross References

Constitutional provisions:
Cannot be reduced to less than 400 square miles, see Article IX, section 1, Constitution of Nebraska.
Electors must approve county division, see Article IX, section 2, Constitution of Nebraska.
Legislature may adjust boundaries when in doubt, see Article IX, section 2, Constitution of Nebraska.
Preexisting debts, consolidated counties remain liable, see Article IX, section 3, Constitution of Nebraska.
Preexisting debts, detached part added to another remains liable for its proportion, see Article IX, section 3, Constitution of Nebraska.
Private property not liable for municipal debts, see Article VIII, section 7, Constitution of Nebraska.
County government and officers, see Chapter 23.
For provisions of boundary compacts, see Appendix.

ARTICLE 1
NAMES AND BOUNDARIES OF COUNTIES

Section
22-101. Adams.
22-102. Antelope.
22-103. Arthur.
22-104. Banner.
22-105. Blaine.
22-106. Boone.
22-107. Box Butte.
22-108. Boyd.
22-109. Brown.
22-110. Buffalo.
22-111. Burt.
22-112. Butler.
22-113. Cass.
22-114. Cedar.
22-115. Chase.
22-116. Cherry.
22-117. Cheyenne.
22-118. Clay.
22-119. Colfax.
22-120. Cuming.
22-121. Custer.
22-122. Dakota.
22-123. Dawes.
22-124. Dawson.
22-125. Deuel.
22-126. Dixon.
22-127. Dodge.
22-128. Douglas.
22-129. Dundy.
22-130. Fillmore.
22-131. Franklin.
22-132. Frontier.

Section

Section
22-194. Boundary streams; change in channel; old channel governs.
22-195. County map; how made; where deposited.
22-196. Counties; boundary changes; how effected.
22-197. Counties; boundary changes; election; notice.
22-198. Counties; boundary changes; ballot; form; effect.

22-101 Adams.

The county of Adams is bounded as follows: Commencing at the southwest corner of township five, north, of range twelve, west; thence east to the southeast corner of township five, north, of range nine, west; thence north to the northeast corner of township eight, north, of range nine, west; thence west to the northwest corner of township eight, north, of range twelve, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 2, p. 212; R.S.1913, § 813; C.S.1922, § 715; C.S.1929, § 25-102.

22-102 Antelope.

The county of Antelope is bounded as follows: Commencing at the southwest corner of township twenty-three, north, of range eight, west; thence east to the southeast corner of township twenty-three, north, of range five, west; thence north to the northeast corner of township twenty-eight, north, of range five, west; thence west to the northwest corner of township twenty-eight, north, of range eight, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 3, p. 212; R.S.1913, § 814; C.S.1922, § 716; C.S.1929, § 25-103.

22-103 Arthur.

The county of Arthur is bounded as follows: Commencing at the southeast corner of township seventeen, north, range thirty-six, west of the sixth principal meridian; thence north on the range line between ranges thirty-five and thirty-six to the northeast corner of township twenty, north, range thirty-six, west; thence west along the fifth standard parallel to the northwest corner of township twenty, north, range forty, west; thence south along the range line between ranges forty and forty-one, west, to the southwest corner of township seventeen, north, range forty, west; thence east along the fourth standard parallel to the place of beginning.

Source: Laws 1887, c. 21, § 1, p. 344; Laws 1895, c. 23, § 1, p. 124; R.S.1913, § 815; Laws 1921, c. 231, § 1, p. 822; C.S.1922, § 717; Laws 1925, c. 155, § 1, p. 393; C.S.1929, § 25-104.

Act of 1913, making provision for organization of Arthur County, is not unconstitutional. State ex rel. Martin v. Hawkins, 95 Neb. 740, 146 N.W. 1044 (1914).

Arthur County, until organized, was attached to McPherson. Robinson v. State, 71 Neb. 142, 98 N.W. 694 (1904).

22-104 Banner.

The county of Banner is bounded as follows: Commencing at the southeast corner of section thirty-six, in township seventeen, north, of range fifty-three, west of the sixth principal meridian; thence due north on the range line between range fifty-two and range fifty-three, to the northeast corner of section twenty-four, township twenty, north, range fifty-three, west; thence due west on the section line to the point where said section line intersects the east line of

State of Wyoming; thence south along the west line of the State of Nebraska, to a point where said state line intersects the township line between townships sixteen and seventeen, north, of range fifty-eight, west; thence due east on said township line to the place of beginning.

Source: Formed from Cheyenne County under Laws 1879, § 10, p. 355, by vote of electors Nov. 6, 1888; R.S.1913, § 816; C.S.1922, § 718; C.S.1929, § 25-105.

22-105 Blaine.

The county of Blaine is bounded as follows: Commencing at the southeast corner of township twenty-one, range twenty-one, running thence north to the northeast corner of township twenty-four, range twenty-one; thence west to the northwest corner of township twenty-four, range twenty-five; thence south to the southwest corner of township twenty-one, range twenty-five; thence east to the southeast corner of township twenty-one, range twenty-one, to the place of beginning.

Source: Laws 1885, c. 31, § 1, p. 205; R.S.1913, § 817; C.S.1922, § 719; C.S.1929, § 25-106.

22-106 Boone.

The county of Boone is bounded as follows: Commencing at the southwest corner of township eighteen, north, of range eight, west; thence east along the northern boundary of the Pawnee reservation, to a point where the dividing line between ranges four and five, west, intersect the same; thence north to the northeast corner of township twenty-two, north, of range five, west; thence west to the northwest corner of township twenty-two, north, of range eight, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 4, p. 213; R.S.1913, § 818; C.S.1922, § 720; C.S.1929, § 25-107.

22-107 Box Butte.

The county of Box Butte is bounded as follows: Commencing at the southeast corner of township twenty-four, north, range forty-seven, west; thence north to the northeast corner of township twenty-eight, north, range forty-seven, west; thence west to the northwest corner of township twenty-eight, north, range fifty-two, west; thence south to the southwest corner of township twenty-four, north, range fifty-two, west; thence east to the place of beginning.

Source: Formed from Dawes County under Laws 1879, § 10, p. 355, by vote of electors Nov. 2, 1886; R.S.1913, § 819; C.S.1922, § 721; C.S.1929, § 25-108.

22-108 Boyd.

The county of Boyd is bounded as follows: Commencing at a point in the middle of the main channel of the Niobrara River intersected by the range line between eight and nine west; thence north on said range line to the middle of the main channel of the Missouri River; thence up the main channel of said river to a point intersected by forty-third north parallel; thence west on said parallel to a point intersected by the range line between ranges sixteen and seventeen; thence south on said line to a point in the middle of the main

channel of the Niobrara River; thence down the main channel of said river to the place of beginning.

Source: Laws 1891, c. 20, § 2, p. 224; R.S.1913, § 821; C.S.1922, § 723; C.S.1929, § 25-110.

22-109 Brown.

The county of Brown is bounded as follows: Commencing at the southeast corner of section thirty-two, township twenty-five, north, range twenty, west; thence north along said line to the northeast corner of section five, township twenty-eight, range twenty; thence west to the southeast corner of section thirty-two, township twenty-nine, range twenty; thence north to the center of the channel of the Niobrara River on the section line between sections twenty and twenty-one, township thirty-two, range twenty, west; thence in a westerly direction up the channel of the Niobrara River to a point in the center of said channel, intersected by the line between ranges twenty-four and twenty-five; thence south along said range line to the southwest corner of township twenty-five; thence east along the south line of township twenty-five to place of beginning.

Source: Laws 1883, c. 31, § 1, p. 198; R.S.1913, § 822; C.S.1922, § 724; C.S.1929, § 25-111.

22-110 Buffalo.

The county of Buffalo is bounded as follows: Commencing at a point where the dividing line between ranges twelve and thirteen crosses the southern channel of the Platte River; thence up said channel to a point where the dividing line between ranges eighteen and nineteen intersects the same; thence north along said line to the third standard parallel; thence east along said parallel to the northeast corner of township twelve, north, of range thirteen, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 7, p. 213; R.S.1913, § 823; C.S.1922, § 725; C.S.1929, § 25-112.

22-111 Burt.

The county of Burt is bounded as follows: Commencing at a point where the north line of sections twenty-one, twenty-two, and twenty-three, township twenty-four, north, range ten, east of the sixth principal meridian intersects the eastern boundary line of the State of Nebraska as established by the Iowa-Nebraska Boundary Compact of 1943; thence west along said section lines to the northwest corner of said section twenty-one; thence south along the west line of said sections twenty-one, twenty-eight, and thirty-three to the south boundary line of Omaha Indian reservation; thence west on the south boundary line of said reservation to the line dividing ranges seven and eight, east; thence south on said line to the south line of township twenty-one, north, range eight, east; thence east on said line to the northeast corner of section six, township twenty, north, range nine, east; thence south on section lines to the southwest corner of section twenty, township twenty, north, range nine, east; thence east by section lines to the eastern boundary line of the State of Nebraska as

established by the Iowa-Nebraska Boundary Compact of 1943; and thence northerly along said boundary line to the place of beginning.

Source: G.S.1873, c. 12, § 5, p. 213; Laws 1889, c. 4, § 1, p. 73; R.S.1913, § 824; C.S.1922, § 726; C.S.1929, § 25-113; R.S.1943, § 22-111; Laws 1955, c. 65, § 1, p. 211.

22-112 Butler.

The county of Butler is bounded as follows: Commencing at the southeast corner of township 13 north, range 4 east of the sixth principal meridian; thence north to the northeast corner of section 1, township 16 north, range 4 east; thence east to the southeast corner of section 36, township 17 north, range 4 east; thence north to a point on the east line of section 12, township 17 north, range 4 east, said point being 3826.58 feet south of the northeast corner of said section 12; thence westerly along the approximate middle of the Platte River, as shown in a survey by Richard L. Ronkar and Marvin L. Svoboda, dated November 25, 2002, and described as follows, assuming the east line of said section 12 to have a bearing of N 02° 00' 09'' W; thence S 87° 05' 20'' W, 5303.84 feet; thence S 60° 42' 54'' W, 3499.34 feet; thence S 51° 23' 46'' W, 3119.84 feet; thence S 64° 51' 45'' W, 3555.38 feet; thence S 89° 20' 58'' W, 1647.52 feet; thence S 50° 34' 21'' W, 6032.08 feet; thence S 41° 15' 33'' W, 4659.91 feet; thence S 44° 39' 35'' W, 4912.16 feet; thence S 86° 23' 58'' W, 4230.37 feet; thence S 81° 25' 49'' W, 2159.16 feet; thence S 87° 58' 51'' W, 7158.93 feet; thence S 54° 23' 37'' W, 9629.02 feet; thence S 44° 41' 16'' W, 3006.31 feet; thence S 68° 04' 45'' W, 2463.21 feet; thence S 55° 58' 42'' W, 1719.30 feet; thence S 88° 24' 06'' W, 3797.21 feet; thence S 70° 01' 06'' W, 2615.16 feet; thence S 61° 41' 41'' W, 2023.42 feet; thence S 75° 32' 12'' W, 1889.81 feet; thence N 89° 21' 04'' W, 2850.07 feet; thence S 69° 54' 10'' W, 6774.29 feet; thence N 84° 47' 29'' W, 1169.64 feet; thence N 55° 45' 56'' W, 5076.04 feet; thence N 76° 22' 27'' W, 1755.30 feet; thence S 74° 42' 27'' W, 3647.51 feet; thence S 78° 13' 28'' W, 3012.24 feet; thence N 88° 59' 00'' W, 2383.36 feet; thence N 86° 01' 43'' W, 5433.64 feet, to a point on the east line of section 1, township 16 north, range 1 east, said point being 3711.01 feet south of the northeast corner of said section 1 and proceeding westerly, assuming the east line of said section 1 to have a bearing of N 02° 06' 22'' E; thence N 70° 23' 02'' W, 3275.26 feet; thence N 45° 07' 33'' W, 3033.40 feet; thence N 53° 29' 12'' W, 3663.43 feet; thence N 73° 40' 09'' W, 2182.88 feet; thence S 87° 03' 33'' W, 2685.73 feet; thence S 74° 49' 57'' W, 4926.62 feet; thence S 64° 42' 15'' W, 5633.14 feet; thence N 70° 16' 39'' W, 3725.32 feet; thence N 70° 17' 54'' W, 5359.26 feet, to a point on the west line of township 17 north, range 1 east, said point being 904.43 feet north of the southwest corner of said township; thence south to the southwest corner of township 13 north, range 1 east; thence east to the place of beginning.

Source: G.S.1873, c. 12, § 6, p. 213; Laws 1879, § 1, p. 109; R.S.1913, § 825; C.S.1922, § 727; C.S.1929, § 25-114; R.S.1943, § 22-112; Laws 2000, LB 349, § 1; Laws 2003, LB 90, § 1.

22-113 Cass.

The county of Cass is bounded as follows: Commencing at the southwest corner of township ten, north, range nine, east; thence east to the eastern boundary line of the State of Nebraska as established by the Iowa-Nebraska

Boundary Compact of 1943; thence north along said eastern boundary line until it intersects the Platte River; thence up said Platte River until it intersects the line dividing townships twelve and thirteen, north, the last time; thence west to the northwest corner of township twelve, north, range ten, east; thence south two miles; thence west six miles; and thence south to the place of beginning.

Source: G.S.1873, c. 12, § 8, p. 213; R.S.1913, § 826; C.S.1922, § 728; C.S.1929, § 25-115; R.S.1943, § 22-113; Laws 1955, c. 65, § 2, p. 212.

Middle of main channel is boundary between Sarpy and Cass Counties. State ex rel. Pankonin v. County Comrs. of Cass County, 58 Neb. 244, 78 N.W. 494 (1899).

22-114 Cedar.

The county of Cedar is bounded as follows: Commencing at a point in the middle of the main channel of the Missouri River, at which the line dividing ranges one and two, west, crosses said river; thence south to the southwest corner of township twenty-nine, north, of range one, west; thence east to the southeast corner of township twenty-nine, north, of range one, west; thence south to the southeast corner of township twenty-eight, north, of range one, west; thence east to the southeast corner of township twenty-eight, north, of range three, east; thence north to the middle of the main channel of the Missouri River; thence up said channel to the place of beginning.

Source: G.S.1873, c. 12, § 9, p. 214; Laws 1875, § 1, p. 73; R.S.1913, § 827; C.S.1922, § 729; C.S.1929, § 25-116.

22-115 Chase.

The county of Chase is bounded as follows: Commencing at a point where the first standard parallel intersects the west boundary line of the State of Nebraska; thence east to the southeast corner of township five, north, of range thirty-six; thence north to the northeast corner of township eight, north, of range thirty-six; thence west to the west boundary line of the State of Nebraska; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 67, p. 225; R.S.1913, § 828; C.S.1922, § 730; C.S.1929, § 25-117.

22-116 Cherry.

The county of Cherry is bounded as follows: Commencing at the southeast corner of township twenty-five, north, of range twenty-five, west, of the sixth principal meridian; thence west to the southwest corner of township twenty-five, north, of range forty; thence north on the east line of Sheridan County to the northern boundary line of the State of Nebraska; thence east along said boundary line to the range line between ranges twenty-four and twenty-five; thence south on said range line to the point of beginning.

Source: Laws 1883, c. 32, § 1, p. 199; R.S.1913, § 829; C.S.1922, § 731; C.S.1929, § 25-118; R.S.1943, § 22-116; Laws 1947, c. 59, § 1, p. 194.

22-117 Cheyenne.

The county of Cheyenne shall consist of that territory lying between the west boundary line of Deuel County and a part of Garden County, and the east boundary line of Kimball County and a part of Banner County; the south boundary line of Morrill County and the boundary line between the State of Nebraska and the State of Colorado.

Source: G.S.1873, c. 12, § 10, p. 214; R.S.1913, § 830; C.S.1922, § 732; C.S.1929, § 25-119.

22-118 Clay.

The county of Clay is bounded as follows: Commencing at the southwest corner of township five, north, of range eight, west; thence east to the southeast corner of township five, north, of range five, west; thence north to the northeast corner of township eight, north, of range five, west; thence west to the northwest corner of township eight, north, of range eight, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 11, p. 214; R.S.1913, § 831; C.S.1922, § 733; C.S.1929, § 25-120.

22-119 Colfax.

The county of Colfax is bounded as follows: Commencing at the northwest corner of township 20 north, range 2 east of the sixth principal meridian; thence easterly on the north line of township 20 north, ranges 2, 3, and 4 east to the northeast corner of said township 20 north, range 4 east; thence southerly on the east line of townships 20, 19, 18, and 17 north, range 4 east, to a point on the east line of section 12, township 17 north, range 4 east, said point being 3826.58 feet south of the northeast corner of said section 12; thence westerly along the approximate middle of the Platte River, as shown in a survey by Richard L. Ronkar and Marvin L. Svoboda, dated November 25, 2002, and described as follows, assuming the east line of said section 12 to have a bearing of N 02° 00' 09'' W; thence S 87° 05' 20'' W, 5303.84 feet; thence S 60° 42' 54'' W, 3499.34 feet; thence S 51° 23' 46'' W, 3119.84 feet; thence S 64° 51' 45'' W, 3555.38 feet; thence S 89° 20' 58'' W, 1647.52 feet; thence S 50° 34' 21'' W, 6032.08 feet; thence S 41° 15' 33'' W, 4659.91 feet; thence S 44° 39' 35'' W, 4912.16 feet; thence S 86° 23' 58'' W, 4230.37 feet; thence S 81° 25' 49'' W, 2159.16 feet; thence S 87° 58' 51'' W, 7158.93 feet; thence S 54° 23' 37'' W, 9629.02 feet; thence S 44° 41' 16'' W, 3006.31 feet; thence S 68° 04' 45'' W, 2463.21 feet; thence S 55° 58' 42'' W, 1719.30 feet; thence S 88° 24' 06'' W, 3797.21 feet; thence S 70° 01' 06'' W, 2615.16 feet; thence S 61° 41' 41'' W, 2023.42 feet; thence S 75° 32' 12'' W, 1889.81 feet; thence N 89° 21' 04'' W, 2850.07 feet; thence S 69° 54' 10'' W, 6774.29 feet; thence N 84° 47' 29'' W, 1169.64 feet; thence N 55° 45' 56'' W, 5076.04 feet; thence N 76° 22' 27'' W, 1755.30 feet; thence S 74° 42' 27'' W, 3647.51 feet; thence S 78° 13' 28'' W, 3012.24 feet; thence N 88° 59' 00'' W, 2383.36 feet; thence N 86° 01' 43'' W, 5433.64 feet, to a point on the east line of section 1, township 16 north, range 1 east, said point being 3711.01 feet south of the northeast corner of said section 1; thence north, to the northeast corner of section 1, township 16 north, range 1 east; thence east, to the southwest corner of section 31, township 17 north, range 2 east; thence northerly on the west line of townships 17, 18, 19, and 20 north, range 2 east, to the place of beginning.

Source: G.S.1873, c. 12, § 12, p. 214; R.S.1913, § 832; C.S.1922, § 734; C.S.1929, § 25-121; R.S.1943, § 22-119; Laws 2003, LB 90, § 2.

22-120 Cuming.

The county of Cuming is bounded as follows: Commencing at the southwest corner of township twenty-one, north, of range four, east; thence east to the southeast corner of township twenty-one, north, of range seven, east; thence north to the northeast corner of township twenty-four, north, of range seven, east; thence west to the northwest corner of township twenty-four, north, of range four, east; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 13, p. 214; R.S.1913, § 833; C.S.1922, § 735; C.S.1929, § 25-122.

22-121 Custer.

The county of Custer is bounded as follows: Commencing at the southeast corner of township thirteen, north, of range seventeen, west, of the sixth principal meridian; thence north to the northeast corner of township twenty, north, of range seventeen, west; thence west to the northwest corner of township twenty, north, of range twenty-five, west; thence south to the southwest corner of township thirteen, north, of range twenty-five, west; thence east to the place of beginning.

Source: Laws 1877, § 1, p. 211; R.S.1913, § 834; C.S.1922, § 736; C.S. 1929, § 25-123.

22-122 Dakota.

The county of Dakota is bounded as follows: Commencing at the most westerly point where the township line between townships twenty-nine and thirty, north, intersects the state boundary line between the State of Nebraska and the State of South Dakota; thence west along said line to the northwest corner of section three, township twenty-nine, north, range six, east; thence south by section lines to the north line of Thurston County; thence east along the north line of Thurston County to the eastern boundary line of the State of Nebraska as established by the Iowa-Nebraska Boundary Compact of 1943; thence northerly along said state boundary line to the point where said boundary line is intersected by the east boundary line of the State of South Dakota; and thence westerly along the middle of the main channel of the Missouri River to the place of beginning.

Source: G.S.1873, c. 12, § 14, p. 214; Laws 1905, c. 43, § 1, p. 286; R.S.1913, § 835; C.S.1922, § 737; C.S.1929, § 25-124; R.S.1943, § 22-122; Laws 1955, c. 65, § 3, p. 212.

22-123 Dawes.

The county of Dawes is bounded as follows: Commencing at the southeast corner of township twenty-nine, north, of range forty-seven, west of the sixth principal meridian; thence west to the southwest corner of township twenty-nine, north, of range fifty-two west; thence north on the range line between ranges fifty-two and fifty-three to the northern boundary line of the State of Nebraska; thence east along said boundary to the line between ranges forty-six and forty-seven west; thence south on said range line to the point of beginning.

Source: Laws 1885, c. 32, § 1, p. 206; R.S.1913, § 836; Laws 1921, c. 231, § 2, p. 823; C.S.1922, § 738; C.S.1929, § 25-125.

22-124 Dawson.

The county of Dawson is bounded as follows: Commencing at the southwest corner of township nine, north, of range twenty-five, west; thence east to the center of the south channel of the Platte River; thence down said channel to a point where the dividing line between ranges eighteen and nineteen intersects the same; thence north along said dividing line to the northeast corner of township twelve, north, of range nineteen, west; thence west to the northwest corner of township twelve, north, of range twenty-five, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 15, p. 215; R.S.1913, § 837; C.S.1922, § 739; C.S.1929, § 25-126.

22-125 Deuel.

The county of Deuel is bounded as follows: Commencing at the point where the line between ranges forty-one and forty-two, west of the sixth principal meridian intersects the south boundary of Nebraska, eighty-two links west of the monument at the northeast corner of Colorado; thence west along the south boundary line of the State of Nebraska to its intersection with the line between ranges forty-six and forty-seven west; thence north along said range line to the third standard parallel to the north boundary of township twelve, north, on the third standard parallel; thence east along said parallel to the southeast corner of section thirty-two, township thirteen, north, of range forty-six west; thence north on section lines to the northwest corner of section four, township fourteen, north, of range forty-six west; thence east on township lines to the northeast corner of section six, township fourteen, north, range forty-one west; thence south on section lines to the third standard parallel; thence east along said parallel to the northeast boundary of township twelve, range forty-two; thence south on the line between ranges forty-one and forty-two to the place of beginning.

Source: Formed from Cheyenne County under Laws 1879, § 10, p. 355, by vote of electors Nov. 6, 1888; Laws 1895, c. 24, § 1, p. 125; R.S.1913, § 838; Laws 1921, c. 231, § 3, p. 823; C.S.1922, § 740; C.S.1929, § 25-127.

22-126 Dixon.

The county of Dixon is bounded as follows: Commencing at the southwest corner of township twenty-seven, north, of range four, east; thence east to the line dividing sections thirty-three and thirty-four in township twenty-seven, north, of range six, east; thence north to the dividing line between townships twenty-nine and thirty, north, of range six, east; thence east to the middle of the main channel of the Missouri River; thence up said channel to a point where the dividing line between ranges three and four east, intersects the same; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 16, p. 215; R.S.1913, § 839; C.S.1922, § 741; C.S.1929, § 25-128.

22-127 Dodge.

The county of Dodge is bounded as follows: Commencing at the intersection of the line dividing ranges four and five, east, with the south bank of the Platte

River; thence easterly along the south bank of the Platte River to the fourth standard parallel; thence east along said parallel to the southeast corner of section thirty-one, township seventeen, north, range ten, east; thence north on section lines, three miles to the northeast corner of section nineteen, township seventeen, north, of range ten, east; thence west on section lines two miles to southwest corner of section thirteen, township seventeen, range nine, east; thence north on section lines, one mile to northwest corner of section thirteen, last aforesaid; thence west on section line one mile to southwest corner of section eleven, township seventeen, north, range nine, east; thence north on section lines one mile to northwest corner of said section eleven, last aforesaid; thence west on section lines one mile to the southwest corner of section three, township seventeen, range nine, east; thence north on section lines one mile to the northwest corner of said section three; thence west on section line one mile to northwest corner of section four, township seventeen, range nine, east; thence north on section line one mile to northeast corner of section thirty-two, township eighteen, range nine, east; thence west one-half mile on section line to northwest corner of the northeast quarter of section thirty-two, township eighteen, range nine, east; thence north on half section line two miles to the southeast corner of the southwest quarter of section seventeen, township eighteen, range nine, east; thence west on section line one-half mile to southwest corner of section seventeen, township eighteen, range nine, east; thence north on section lines fifteen miles to northeast corner of section six, township twenty, range nine, east; thence west along the fifth standard parallel to the northwest corner of township twenty, north of range five, east; thence south by the line dividing ranges four and five, east, to the place of beginning.

Source: G.S.1873, c. 12, § 17, p. 215; Laws 1875, § 1, p. 71; R.S.1913, § 840; C.S.1922, § 742; C.S.1929, § 25-129.

Boundary line is not the river, but imaginary line in the river. Dodge County v. Saunders County, 70 Neb. 442, 97 N.W. 617 (1903).

22-128 Douglas.

The county of Douglas is bounded as follows: Commencing at a point on the eastern boundary line of the State of Nebraska as established by the Iowa-Nebraska Boundary Compact of 1943, two miles south of the dividing line between townships fourteen and fifteen, north; thence north and following said eastern boundary line to the north boundary line of township sixteen; thence west to a point in the middle of the main channel of the Platte River; thence down said channel to a point two miles due south of the dividing line between townships fourteen and fifteen; and thence east to the place of beginning.

Source: G.S.1873, c. 12, § 18, p. 215; R.S.1913, § 841; C.S.1922, § 743; C.S.1929, § 25-130; R.S.1943, § 22-128; Laws 1955, c. 65, § 4, p. 213.

22-129 Dundy.

The county of Dundy is bounded as follows: Commencing at the southwest corner of the state; thence east to the southeast corner of township one, north, of range thirty-six; thence north to the northeast corner of township four, north, of range thirty-six; thence west to the west boundary line of the State of Nebraska; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 66, p. 225; R.S.1913, § 842; C.S.1922, § 744; C.S.1929, § 25-131.

22-130 Fillmore.

The county of Fillmore is bounded as follows: Commencing at the southwest corner of township five, north, of range four, west; thence east to the southeast corner of township five, north, of range one, west; thence north to the northeast corner of township eight, north, of range one, west; thence west to the northwest corner of township eight, north, of range four, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 20, p. 216; R.S.1913, § 843; C.S.1922, § 745; C.S.1929, § 25-132.

22-131 Franklin.

The county of Franklin is bounded as follows: Commencing at the southwest corner of township one, north, of range sixteen, west; thence east to the southeast corner of township one, north, of range thirteen, west; thence north to the first standard parallel; thence west to the northwest corner of township four, north, of range sixteen, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 19, p. 216; R.S.1913, § 844; C.S.1922, § 746; C.S.1929, § 25-133.

22-132 Frontier.

The county of Frontier is bounded as follows: Commencing at the southwest corner of township five, north, of range thirty, west; thence east to the southeast corner of township five, north, of range twenty-five, west; thence north to the northeast corner of township five, north, of range twenty-five, west; thence east to the southeast corner of township six, north, of range twenty-four, west; thence north to the northeast corner of township eight, north, of range twenty-four, west; thence west to the northwest corner of township eight, north, of range thirty, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 21, p. 216; R.S.1913, § 845; C.S.1922, § 747; C.S.1929, § 25-134.

22-133 Furnas.

The county of Furnas shall contain that territory described as townships one, two, three and four, north, of ranges twenty-one, twenty-two, twenty-three, twenty-four and twenty-five, west.

Source: G.S.1873, c. 12, § 63, p. 224; R.S.1913, § 846; C.S.1922, § 748; C.S.1929, § 25-135.

22-134 Gage.

The county of Gage is bounded as follows: Commencing at the southeast corner of township one, north, of range eight, east; thence north to the northeast corner of township six, north, of range eight, east; thence west to the northwest corner of township six, north, of range five, east; thence south along the range line, dividing ranges four and five, east, to the southern boundary line of the state; and thence east along the state line to the place of beginning.

Source: G.S.1873, c. 12, § 22, p. 216; R.S.1913, § 847; C.S.1922, § 749; C.S.1929, § 25-136.

22-135 Garden.

The county of Garden is bounded as follows: Commencing at the southeast corner of section thirty-one, township fifteen, north, range forty-one west of the sixth principal meridian; thence north on section lines to the northeast corner of section six, township sixteen north, range forty-one, west; thence east on the fourth standard parallel to the southeast corner of township seventeen north, range forty-one, west; thence north along the range line between ranges forty and forty-one to the northeast corner of township twenty, north, range forty-one, west; thence west along the fifth standard parallel to the southeast corner of section thirty-three, township twenty-one north, range forty-one, west; thence north on section lines to the northeast corner of section four, township twenty-three, north, range forty-one, west, on south boundary of Sheridan County; thence west on said boundary line to the northwest corner of section four in township twenty-three, north, range forty-six, west; thence south to the township line between townships twenty and twenty-one, north, range forty-six, west; thence east on said township line to the northwest corner of section four, in township twenty, north, range forty-six, west; thence south to township line between townships sixteen and seventeen, north; thence east to the northwest corner of section four, township sixteen, north, range forty-six, west; thence south to the township line between the townships fourteen and fifteen, north; thence east on said township line to the place of beginning.

Source: Formed from Deuel County pursuant to Laws 1879, § 10, p. 355, by vote of electors Nov. 2, 1909; R.S.1913, § 848; Laws 1921, c. 231, § 4, p. 824; C.S.1922, § 750; Laws 1925, c. 155, § 2, p. 394; C.S.1929, § 25-137.

Boundary line between Garden and Grant Counties established. State ex rel. Reed v. Garden County, 103 Neb. 142, 170 N.W. 835 (1919), rehearing denied 130 Neb. 145, 171 N.W. 299 (1919).

22-136 Garfield.

The county of Garfield is bounded as follows: Commencing at the southeast corner of township numbered twenty-one, north, of range thirteen, west, of the sixth principal meridian; thence north to the northeast corner of township numbered twenty-four in range thirteen, west; thence west to the northwest corner of township numbered twenty-four, in range sixteen, west; thence south to the southwest corner of township numbered twenty-one, north, in range sixteen, west; thence east to the place of beginning.

Source: Formed from Wheeler County by vote of electors pursuant to Laws 1879, § 10, p. 355, and proclamation of Governor, Oct. 4, 1884; R.S.1913, § 849; C.S.1922, § 751; C.S.1929, § 25-138.

22-137 Gosper.

The county of Gosper is bounded as follows: On the east by Phelps County, on the south by Furnas County, on the west by Frontier County, on the north by Dawson County.

Source: Laws 1881, c. 36, p. 215; R.S.1913, § 850; C.S.1922, § 752; C.S.1929, § 25-139.

22-138 Grant.

The county of Grant is bounded as follows: Commencing at the southeast corner of township twenty-one, north of range thirty-six, west of the sixth principal meridian; thence north on said range line to the northeast corner of

township twenty-four, north of range thirty-six, west; thence west along the south line of Cherry County to the east line of Sheridan County; thence south along the east line of Sheridan County to the southwest corner of township twenty-four, north, range forty, west; thence west along the south line of Sheridan County to the northwest corner of section three, range forty-one, west; thence south on section lines to the southwest corner of section thirty-four, township twenty-one, north, range forty-one, west, on the fifth standard parallel; thence east along said parallel to the place of beginning.

Source: Laws 1887, c. 22, § 1, p. 345; Laws 1895, c. 25, § 1, p. 126; R.S.1913, § 851; Laws 1921, c. 231, § 5, p. 824; C.S.1922, § 753; C.S.1929, § 25-140.

Boundary line between Garden and Grant Counties established. State ex rel. Reed v. Garden County, 103 Neb. 142, 170 N.W. 835 (1919), rehearing denied 130 Neb. 145, 171 N.W. 299 (1919).

22-139 Greeley.

The county of Greeley is bounded as follows: Commencing at the southwest corner of township seventeen, north, of range twelve, west; thence east to the southeast corner of township seventeen, north, of range nine, west; thence north to the northeast corner of township twenty, north, of range nine, west; thence west to the northwest corner of township twenty, north, of range twelve, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 23, p. 216; R.S.1913, § 852; C.S.1922, § 754; C.S.1929, § 25-141.

22-140 Hall.

The county of Hall is bounded as follows: Commencing at the southwest corner of township nine, north, of range twelve, west; thence east to the southeast corner of township nine, north, of range nine, west; thence north to the northeast corner of township twelve, north, of range nine, west; thence west to the northwest corner of township twelve, north, of range twelve, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 25, p. 217; R.S.1913, § 853; C.S.1922, § 755; C.S.1929, § 25-142.

22-141 Hamilton.

The county of Hamilton is bounded as follows: Commencing at the southwest corner of township nine, north, of range eight, west; thence east to the southeast corner of township nine, north, of range five, west; thence north to the middle of the south channel of the Platte River; thence west along the middle of said south channel, to the line dividing ranges eight and nine, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 26, p. 217; R.S.1913, § 854; C.S.1922, § 756; C.S.1929, § 25-143.

22-142 Harlan.

The county of Harlan is bounded as follows: Commencing at the southwest corner of township one, north, of range twenty, west; thence east to the southeast corner of township one, north, of range seventeen, west; thence north to the northeast corner of township four, north, of range seventeen, west;

thence west to the northwest corner of township four, north, of range twenty, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 24, p. 217; R.S.1913, § 855; C.S.1922, § 757; C.S.1929, § 25-144.

22-143 Hayes.

The county of Hayes is bounded as follows: Commencing at the northeast corner of township eight, range thirty-one, west; thence west to the northwest corner of township eight, range thirty-five; thence south to the southwest corner of township five, range thirty-five; thence east to the southeast corner of township five, range thirty-one; thence north to the place of beginning.

Source: Laws 1877, § 1, p. 212; R.S.1913, § 856; C.S.1922, § 758; C.S. 1929, § 25-145.

22-144 Hitchcock.

The county of Hitchcock shall contain that territory described as townships one, two, three and four, north, of ranges thirty-one, thirty-two, thirty-three, thirty-four and thirty-five, west.

Source: G.S.1873, c. 12, § 65, p. 225; R.S.1913, § 857; C.S.1922, § 759; C.S.1929, § 25-146.

22-145 Holt.

The county of Holt is bounded as follows: Commencing at the southwest corner of township twenty-five, north, of range sixteen, west; thence east to the southeast corner of township twenty-five, north, of range nine, west; thence north to the middle of the main channel of the Niobrara River, thence up said channel to a point where the second guide meridian intersects the same; thence south along said second guide meridian, to the place of beginning.

Source: G.S.1873, c. 12, § 27, p. 217; R.S.1913, § 858; C.S.1922, § 760; C.S.1929, § 25-147.

Attempt to extend boundary in 1883 was void. State ex rel. Norton v. Van Camp and Kruse, 36 Neb. 9, 54 N.W. 113 (1893).

22-146 Hooker.

The county of Hooker is bounded as follows: Commencing at the southeast corner of township twenty-one, north, of range thirty-one, west, of the sixth principal meridian; thence north along the west boundary line of Thomas County to the northeast corner of township twenty-four, north, of range thirty-one, west; thence west along the south line of Cherry County to the northwest corner of township twenty-four, north, of range thirty-five, west; thence south along the east boundary line of Grant County to the southwest corner of township twenty-one, north, of range thirty-five, west; thence east along the north boundary line of McPherson County to the place of beginning.

Source: Laws 1889, c. 1, § 1, p. 69; R.S.1913, § 859; C.S.1922, § 761; C.S.1929, § 25-148.

22-147 Howard.

The county of Howard is bounded as follows: Commencing at the southwest corner of township thirteen, north, of range twelve, west; thence east to the

southeast corner of township thirteen, north, of range nine, west; thence north to the northeast corner of township sixteen, north, of range nine, west; thence west to the northwest corner of township sixteen, north, of range twelve, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 28, p. 217; R.S.1913, § 860; C.S.1922, § 762; C.S.1929, § 25-149.

22-148 Jefferson.

The county of Jefferson is bounded as follows: Commencing at the southwest corner of township one, north, of range one, east; thence east to the southeast corner of township one, north, of range four, east; thence north to the northeast corner of township four, north, of range four, east; thence west to the northwest corner of township four, north, of range one, east; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 29, p. 217; R.S.1913, § 861; C.S.1922, § 763; C.S.1929, § 25-150.

22-149 Johnson.

The county of Johnson is bounded as follows: Commencing at the southwest corner of township four, north, of range nine, east; thence east to the southeast corner of section thirty-three in township four, north, of range twelve, east; thence north by section lines to the northeast corner of section four in township six, north, of range twelve, east; thence west to the northwest corner of township six, north, of range nine, east; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 30, p. 218; R.S.1913, § 862; C.S.1922, § 764; C.S.1929, § 25-151.

22-150 Kearney.

The county of Kearney is bounded on the north by the middle of the south channel of the Platte River; on the east, by the line dividing ranges twelve and thirteen, west; on the south, by the first standard parallel; on the west by the line dividing ranges sixteen and seventeen, west.

Source: G.S.1873, c. 12, § 31, p. 218; R.S.1913, § 863; C.S.1922, § 765; C.S.1929, § 25-152.

22-151 Keith.

The county of Keith is bounded as follows: Commencing at the northeast corner of township sixteen, north, of range thirty-five, west, sixth principal meridian; thence south along the range line to the southeast corner of township thirteen, north, of range thirty-five, west, on the third standard parallel; thence east along the parallel to the northeast corner of township twelve, north, of range thirty-five, west; thence south three miles to the southeast corner of section thirteen, township twelve, north; thence west by section lines to the northwest corner of section nineteen, township twelve, north, of range forty-one west; thence north along the range line to the third standard parallel; thence west along said parallel to the southwest corner of section thirty-two, range forty-one, west; thence north by section lines to the northwest corner of section

five, township sixteen, north, on the fourth standard parallel; thence east along said parallel to the place of beginning.

Source: G.S.1873, c. 12, § 68, p. 225; R.S.1913, § 864; Laws 1921, c. 231, § 6, p. 825; C.S.1922, § 766; C.S.1929, § 25-153.

22-152 Keya Paha.

The county of Keya Paha is bounded as follows: Commencing in the middle of the channel of the Niobrara River where the line dividing ranges sixteen and seventeen, west, of sixth principal meridian crosses said Niobrara River; thence north to the forty-third parallel of north latitude; thence west along said parallel of north latitude to the line dividing range twenty-four from range twenty-five, west, of sixth principal meridian; thence south along said line to the middle of the channel of the Niobrara River; thence down the middle of the channel of the Niobrara River to the place of beginning.

Source: Formed from Brown County pursuant to Laws 1879, § 10, p. 355, by vote of electors Nov. 4, 1884; Laws 1893, c. 13, § 1, p. 146; R.S.1913, § 865; C.S.1922, § 767; C.S.1929, § 25-154.

22-153 Kimball.

The county of Kimball is bounded as follows: Commencing at the northeast corner of section three in township number sixteen, north, of range fifty-three, west; thence due west on the township line between townships sixteen and seventeen, north, to a point where said line intersects the east boundary line of the State of Wyoming; thence south along the west boundary line of the State of Nebraska to a point where the said line intersects the north boundary line of the State of Colorado; thence east along the south boundary line of the State of Nebraska to a point where said line intersects a line extending due north on the section line between sections sixteen and seventeen, township twelve, north, range fifty-three, west; thence north to the northwest corner of section four, in township twelve, north, of range fifty-three, west; thence due east to the southeast corner of section thirty-four in township thirteen, north, of range fifty-three, west; and thence due north to the place of beginning.

Source: Formed from Cheyenne County pursuant to Laws 1879, § 10, p. 355, by vote of electors Nov. 6, 1888; R.S.1913, § 866; C.S.1922, § 768; C.S.1929, § 25-155.

22-154 Knox.

The county of Knox is bounded as follows: Commencing at the southwest corner of township twenty-nine, north, of range eight, west; thence east to the southeast corner of township twenty-nine, north, of range two, west; thence north to the middle of the main channel of the Missouri River; thence along the middle of the main channel of said river to the point where the dividing line between ranges eight and nine, west, intersects the same; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 33, p. 218, § 60, p. 224; Laws 1883, c. 34, § 1, p. 201; R.S.1913, § 867; C.S.1922, § 769; C.S.1929, § 25-156.

22-155 Lancaster.

The county of Lancaster is bounded as follows: Commencing at the southwest corner of township seven, north, of range five, east; thence east to southeast corner of township seven, north, of range eight, east; thence north to the northeast corner of township twelve, north, of range eight, east; thence west to the northwest corner of township twelve, north, of range five, east; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 32, p. 218; R.S.1913, § 868; C.S.1922, § 770; C.S.1929, § 25-157.

22-156 Lincoln.

The county of Lincoln is bounded as follows: Commencing at the southwest corner of township nine, north, of range thirty-four, west; thence east to the southeast corner of township nine, north, of range twenty-six, west; thence north to the fourth standard parallel; thence west to a point where the dividing line between ranges thirty-four and thirty-five intersects the same; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 34, p. 218; R.S.1913, § 869; C.S.1922, § 771; C.S.1929, § 25-158.

22-157 Logan.

The county of Logan is bounded as follows: Commencing at the southeast corner of township seventeen, north, of range twenty-six, west, of the sixth principal meridian; running thence west along the north line of Lincoln County to the southwest corner of township seventeen, north, range twenty-nine, west; thence north to the northwest corner of township twenty, north, range twenty-nine, west; thence east to the northeast corner of township twenty, north, range twenty-six, west; thence south along the west line of Custer County to the point of beginning.

Source: Laws 1885, c. 33, § 1, p. 207; R.S.1913, § 870; C.S.1922, § 772; C.S.1929, § 25-159.

22-158 Loup.

The county of Loup is bounded as follows: Commencing at the northeast corner of township twenty-four, north, of range seventeen, west; thence west to the northwest corner of township twenty-four, north, of range twenty, west; thence south to the southwest corner of township twenty-one, north, of range twenty, west; thence east to the southeast corner of township twenty-one, north, of range seventeen, west; thence north to the place of beginning.

Source: Laws 1883, c. 35, § 1, p. 202; R.S.1913, § 871; C.S.1922, § 773; C.S.1929, § 25-160.

22-159 Madison.

The county of Madison is bounded as follows: Commencing at the southeast corner of township twenty-one, north, of range one, west; thence north to the northeast corner of township twenty-four, north, of range one, west; thence west to the northwest corner of township twenty-four, north, of range four,

west; thence south to the southwest corner of township twenty-one, north, of range four, west; thence east to the place of beginning.

Source: G.S.1873, c. 12, § 35, p. 218; R.S.1913, § 872; C.S.1922, § 774; C.S.1929, § 25-161.

22-160 McPherson.

The county of McPherson is bounded as follows: Commencing at the southeast corner of township seventeen, north, of range thirty, west, of the sixth principal meridian; thence north along the west boundary line of Logan County to northeast corner of township twenty, north, of range thirty, west; thence west along said township line to the northwest corner of township twenty, north, of range thirty-five, west; thence south on said range line to southwest corner of township seventeen, north, of range thirty-five, west; thence east along the north boundary line of Lincoln County to the place of beginning.

Source: Laws 1887, c. 23, § 1, p. 346; R.S.1913, § 873; C.S.1922, § 775; C.S.1929, § 25-162.

22-161 Merrick.

The county of Merrick is bounded as follows: Commencing at the northeast corner of township sixteen, north, of range three, west; thence south by the line dividing ranges two and three, west, to the middle of the south channel of the Platte River; thence westerly by the middle of said south channel to its intersection with the line dividing ranges eight and nine, west; thence north by said line to the northwest corner of township sixteen, north, of range eight, west; thence east to the west boundary of the Pawnee Indian reservation; thence by the boundaries of said reservation passing by its south side around to the line dividing townships sixteen and seventeen, north; thence east to the place of beginning.

Source: G.S.1873, c. 12, § 36, p. 219; R.S.1913, § 874; C.S.1922, § 776; C.S.1929, § 25-163.

22-162 Morrill.

The county of Morrill is bounded as follows: Commencing at the southwest corner of section eighteen, township seventeen, north, range fifty-two, west; thence north along the range line, between ranges fifty-two and fifty-three to the fifth standard parallel; thence east along said parallel to the southwest corner of section thirty-three, township twenty-one, north, range fifty-two, west; thence north along section lines to the northwest corner of section four, township twenty-three, north, range fifty-two west; thence east along the line between townships twenty-three and twenty-four to the northeast corner of section five, township twenty-three, north, range forty-six west; thence south along section lines to the southeast corner of section thirty-two, on the fifth standard parallel; thence east along said parallel to the northeast corner of section five, township twenty, north, range forty-six, west; thence south along section lines to the northeast corner of Cheyenne County, at the southeast corner of section seventeen, township seventeen, north, range forty-six, west; thence west along the north line of Cheyenne County to the place of beginning.

Source: Formed from Cheyenne County pursuant to Laws 1879, § 10, p. 355, by vote of electors Nov. 3, 1908; R.S.1913, § 875; Laws 1921, c. 231, § 7, p. 826; C.S.1922, § 777; C.S.1929, § 25-164.

22-163 Nance.

The county of Nance shall include all that territory included in and known as the Pawnee Indian reservation. It shall also include all of sections numbered six, seven, eighteen, nineteen, thirty and thirty-one, in township seventeen, north, of range eight, west, of the sixth principal meridian.

Source: Laws 1879, § 1, p. 148; Laws 1881, c. 37, § 1, p. 217; R.S.1913, §§ 876, 877; C.S.1922, §§ 778, 779; C.S.1929, §§ 25-165, 25-166.

22-164 Nemaha.

The county of Nemaha is bounded as follows: Commencing at the southwest corner of section thirty-four in township four, north, of range twelve, east; thence north by section lines to the northwest corner of section three in township six, north, of range twelve, east; thence east by the line dividing townships six and seven, north, to its first intersection with the state boundary; thence around the old channel of the Missouri River and including the land known as McKissick's Island, by the eastern boundary of the state to the intersection thereof with the line dividing townships three and four, north; and thence west by the line to the place of beginning.

Source: G.S.1873, c. 12, § 37, p. 219; R.S.1913, § 879; C.S.1922, § 781; C.S.1929, § 25-168; R.S.1943, § 22-164; Laws 1998, LB 59, § 1.

22-165 Nuckolls.

The county of Nuckolls is bounded as follows: Commencing at the southwest corner of township one, north, of range eight, west; thence east along the base line to the southeast corner of said township in range five, west; thence north to the northeast corner of township four, north, of range five, west; thence west to the northwest corner of said township in range eight, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 38, p. 219; R.S.1913, § 880; C.S.1922, § 782; C.S.1929, § 25-169.

22-166 Otoe.

The county of Otoe is bounded as follows: Commencing at the southwest corner of township seven, north, range nine, east; thence east to the middle of the main channel of the Missouri River as established by the original government survey of 1857; thence up said channel until it intersects the southern boundary of the State of Iowa; thence continuing north along the eastern boundary line of the State of Nebraska as established by the Iowa-Nebraska Boundary Compact of 1943 until said boundary line intersects the dividing line between townships nine and ten; thence west to the northwest corner of township nine, north, range nine, east; and thence south to the place of beginning.

Source: G.S.1873, c. 12, § 39, p. 219; R.S.1913, § 881; C.S.1922, § 783; C.S.1929, § 25-170; R.S.1943, § 22-166; Laws 1955, c. 65, § 5, p. 213.

22-167 Pawnee.

The county of Pawnee is bounded as follows: Commencing at the southwest corner of township one, north, of range nine, east; thence east to the southeast

corner of said township in range twelve, east; thence north to the northeast corner of township three, north, of range twelve, east; thence west to the northwest corner of township three, north, of range nine, east; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 40, p. 219; R.S.1913, § 882; C.S.1922, § 784; C.S.1929, § 25-171.

22-168 Perkins.

The county of Perkins is bounded as follows: Commencing at the southwest corner of township nine, north, of range forty-two, west, on the west boundary of Nebraska; thence east to the southeast corner of township nine, north, of range thirty-five, west; thence north to the northeast corner of section twenty-four, township twelve, west; thence west on section lines to the northwest corner of section nineteen, in township twelve, north, of range forty-one, west; thence south along the west line of said section nineteen to its intersection with the south boundary of Nebraska; thence east along said boundary line to the monument at the northeast corner of Colorado; thence south along the west boundary of Nebraska to the place of beginning.

Source: Formed from Keith County pursuant to Laws 1879, § 10, p. 355, by vote of electors Nov. 8, 1887; R.S.1913, § 883; Laws 1921, c. 231, § 8, p. 826; C.S.1922, § 785; C.S.1929, § 25-172.

22-169 Phelps.

The county of Phelps is bounded as follows: Commencing at the southwest corner of township five, north, of the base line, and range twenty, west, of the sixth principal meridian; thence running north to the middle of the south channel of the Platte River; thence running in an easterly direction along the middle of the south channel until it reaches the line dividing the sixteenth and seventeenth ranges, west, of the said sixth principal meridian; thence south to the southeast corner of townships five, north, and seventeen, west, as aforesaid; thence west to the place of beginning.

Source: G.S.1873, c. 12, § 57, p. 223; R.S.1913, § 884; C.S.1922, § 786; C.S.1929, § 25-173.

22-170 Pierce.

The county of Pierce is bounded as follows: Commencing at the southwest corner of township twenty-five, north, of range four, west; thence east to the southeast corner of township twenty-five, north, of range one, west; thence north to the northeast corner of township twenty-eight, north, of range one, west; thence west to the northwest corner of township twenty-eight, north, of range four, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 41, p. 220; R.S.1913, § 885; C.S.1922, § 787; C.S.1929, § 25-174.

22-171 Platte.

The county of Platte is bounded as follows: Commencing at a point on the east line of township 16 north, range 1 east, said point being 3711.01 feet south of the northeast corner of section 1, of said township, and assuming the east line of said section 1 to have a bearing of N 02° 06' 22'' E; thence N 70° 23' 02''

W, 3275.26 feet; thence N 45° 07' 33'' W, 3033.40 feet; thence N 53° 29' 12'' W, 3663.43 feet; thence N 73° 40' 09'' W, 2182.88 feet; thence S 87° 03' 33'' W, 2685.73 feet; thence S 74° 49' 57'' W, 4926.62 feet; thence S 64° 42' 15'' W, 5633.14 feet; thence N 70° 16' 39'' W, 3725.32 feet; thence N 70° 17' 54'' W, 5359.26 feet, to a point on the west line of township 17 north, range 1 east, said point being 904.43 feet north of the southwest corner of said township, thence south to the south bank of the main channel of the Platte River; thence west along said south bank to its intersection with the line dividing ranges 2 and 3 west; thence north by said line to the northwest corner of township 16 north, of range 2 west; thence west on the 4th standard parallel to the eastern boundary of the former Pawnee Indian Reservation; thence west and north by the boundaries of said reservation to the line dividing ranges 4 and 5 west; thence north to the northwest corner of township 20 north, of range 4 west; thence east by the 5th standard parallel to the line dividing ranges 1 and 2 east; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 43, p. 220; R.S.1913, § 886; C.S.1922, § 788; C.S.1929, § 25-175; R.S.1943, § 22-171; Laws 2000, LB 349, § 2; Laws 2003, LB 90, § 3.

22-172 Polk.

The county of Polk is bounded as follows: Commencing at the southwest corner of township thirteen, north, of range four, west; thence east to the southeast corner of township thirteen, north, of range one, west; thence north to the south bank of the north channel of the Platte River; thence west along said south bank to the dividing line between ranges two and three, west; thence to the middle of the south channel of the Platte River; thence west along said channel to a point where the dividing line between ranges four and five, west, intersects the same; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 42, p. 220; R.S.1913, § 887; C.S.1922, § 789; C.S.1929, § 25-176.

22-173 Red Willow.

The county of Red Willow shall contain that territory described as townships one, two, three and four, north, of ranges twenty-six, twenty-seven, twenty-eight, twenty-nine and thirty, west.

Source: G.S.1873, c. 12, § 64, p. 224; R.S.1913, § 888; C.S.1922, § 790; C.S.1929, § 25-177.

22-174 Richardson.

The county of Richardson is bounded as follows: Commencing at the southwest corner of township one, north, of range thirteen, east; thence east to the middle of the main channel of the Missouri River; thence up said channel until it intersects the line dividing townships three and four, north; thence west to the northwest corner of township three, north, of range thirteen, east; and thence south to the place of beginning.

Source: G.S.1873, c. 12, § 44, p. 220; R.S.1913, § 889; C.S.1922, § 791; C.S.1929, § 25-178; R.S.1943, § 22-174; Laws 1998, LB 59, § 2.

22-175 Rock.

The county of Rock is bounded as follows: Commencing at the center of the channel of the Niobrara River, on the section line between sections twenty and twenty-one, township thirty-two, range twenty, west, of the sixth principal meridian; thence south on the said section line to the southwest corner of section thirty-three, township twenty-nine, range twenty, west; thence east to the northwest corner of section four, township twenty-eight, range twenty, west; thence south to the southwest corner of section thirty-three, township twenty-five, range twenty, west; thence east to the range line between ranges sixteen and seventeen; thence north on said range to the middle of the channel of the Niobrara River; thence up the center of the channel of said river to the place of beginning.

Source: Formed from Brown County pursuant to Laws 1879, § 10, p. 355, by vote of electors Nov. 6, 1888; R.S.1913, § 890; C.S.1922, § 792; C.S.1929, § 25-179.

22-176 Saline.

The county of Saline is bounded as follows: Commencing at the southwest corner of township five, north, of range one, east; thence east to the southeast corner of township five, north, of range four, east; thence north to the northeast corner of township eight, north, of range four, east; thence west to the northwest corner of township eight, north, of range one, east; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 45, p. 221; R.S.1913, § 891; C.S.1922, § 793; C.S.1929, § 25-180.

22-177 Sarpy.

The county of Sarpy is bounded as follows: Commencing at a point in the main channel of the Platte River, on the north line of section seventeen, township fourteen, north, range ten, east, the said point being now the northwest corner of said Sarpy County; thence due east to the eastern boundary line of the State of Nebraska as established by the Iowa-Nebraska Boundary Compact of 1943; thence south along said eastern boundary line of the State of Nebraska to a point due east of the main channel of the Platte River, where the same flows into the Missouri River; and thence up the middle of the said channel of the Platte River to the place of beginning.

Source: G.S.1873, c. 12, § 46, p. 221; R.S.1913, § 892; C.S.1922, § 794; C.S.1929, § 25-181; R.S.1943, § 22-177; Laws 1951, c. 43, § 1, p. 154; Laws 1955, c. 65, § 6, p. 213.

Boundaries of Sarpy County do not exclude air base located therein. Ludwig v. Board of County Commissioners of Sarpy County, 170 Neb. 600, 103 N.W.2d 838 (1960).

Middle of river is boundary between Cass and Sarpy Counties. State ex rel. Pankonin v. County Comrs. of Cass County, 58 Neb. 244, 78 N.W. 494 (1899).

22-178 Saunders.

The county of Saunders is bounded as follows: Commencing at the southwest corner of township thirteen, north, of range five, east; thence east to the southeast corner of township thirteen, north, of range eight, east; thence south two miles; thence east six miles; thence north two miles; thence east to the center of the main channel of the Platte River; thence up the center of said main channel until it intersects the north line of township sixteen, north, of range eight, east, which is the northwest corner of Douglas County; thence west

along said north boundary of township sixteen, north, to its intersection with the right bank of the Platte River; thence up said right bank until it intersects the line dividing ranges four and five, east; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 47, p. 221; R.S.1913, § 893; Laws 1921, c. 231, § 9, p. 827; C.S.1922, § 795; C.S.1929, § 25-182.

Platte River is in both Dodge and Saunders Counties. Dodge County v. Saunders County, 70 Neb. 442, 97 N.W. 617 (1903).

22-179 Scotts Bluff.

The county of Scotts Bluff is bounded as follows: Commencing at the northeast corner of section five, in township twenty-three, north, of range fifty-two, west, of the sixth principal meridian; thence west by township lines to a point where the said line intersects the west boundary line of the State of Nebraska; thence south along the west boundary line of the State of Nebraska to a point on the section line between sections eighteen and nineteen, in township twenty, north, of range fifty-eight, west; thence due east on said section line to the southeast corner of section thirteen, in township twenty, north, of range fifty-three, west; thence north on the range line between ranges fifty-two and fifty-three, west to the northeast corner of section one, in township twenty, north, of range fifty-three, west; thence east to the southeast corner of section thirty-two, in township twenty-one, north, of range fifty-two, west; and thence due north to the place of beginning.

Source: Formed from Cheyenne County pursuant to Laws 1879, § 10, p. 355, by vote of electors Nov. 6, 1888; R.S.1913, § 894; Laws 1921, c. 231, § 10, p. 827; C.S.1922, § 796; C.S.1929, § 25-183.

22-180 Seward.

The county of Seward is bounded as follows: Commencing at the southwest corner of township nine, north, of range one, east; thence east to the southeast corner of township nine, north, of range four, east; thence north to the northeast corner of township twelve, north, of range four, east; thence west to the northwest corner of township twelve, north, of range one, east; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 48, p. 221; R.S.1913, § 895; C.S.1922, § 797; C.S.1929, § 25-184.

22-181 Sheridan.

The county of Sheridan is bounded as follows: Commencing at the southeast corner of township twenty-four, north, of range forty-one, west, of the sixth principal meridian; thence west to the southwest corner of township twenty-four, north, of range forty-six; thence north on the range line between ranges forty-six and forty-seven to the northern boundary line of the State of Nebraska; thence east along said boundary line to the range line between ranges forty and forty-one; thence south on said range line to the point of beginning.

Source: Laws 1885, c. 34, § 1, p. 208; R.S.1913, § 896; C.S.1922, § 798; C.S.1929, § 25-185.

22-182 Sherman.

The county of Sherman is bounded as follows: Commencing at the southwest corner of township thirteen, north, of range sixteen, west; thence east to the southeast corner of township thirteen, north, of range thirteen, west; thence north to the northeast corner of township sixteen, north, of range thirteen, west; thence west to the northwest corner of township sixteen, north, of range sixteen, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 49, p. 221; R.S.1913, § 897; C.S.1922, § 799; C.S.1929, § 25-186.

22-183 Sioux.

The county of Sioux is bounded as follows: Commencing at the southeast corner of township twenty-four, north, of range fifty-three, west, of the sixth principal meridian; thence west to the western boundary line of the State of Nebraska; thence north along the said boundary line to the northwest corner of the State of Nebraska; thence east on the northern boundary line of the State of Nebraska to the range line between ranges fifty-two and fifty-three; thence south to the place of beginning.

Source: Laws 1885, c. 35, § 1, p. 209; R.S.1913, § 898; C.S.1922, § 800; C.S.1929, § 25-187.

22-184 Stanton.

The county of Stanton is bounded as follows: Commencing at the southwest corner of township twenty-one, north, of range one, east; thence east to the southeast corner of township twenty-one, north, of range three, east; thence north to the northeast corner of township twenty-four, north, of range three, east; thence west to the northwest corner of township twenty-four, north, of range one, east; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 50, p. 221; R.S.1913, § 899; C.S.1922, § 801; C.S.1929, § 25-188.

22-185 Thayer.

The county of Thayer is bounded as follows: Commencing at the southwest corner of township one, north, of range four, west; thence east to the southeast corner of township one, north, of range one, west; thence north along the sixth principal meridian to the first standard parallel; thence west to the northwest corner of township four, north, of range four, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 51, p. 222; R.S.1913, § 900; C.S.1922, § 802; C.S.1929, § 25-189.

22-186 Thomas.

The county of Thomas is bounded as follows: Commencing at the southeast corner of township twenty-one, north, of range twenty-six, west, of the sixth principal meridian, running thence north along the west line of Blaine County to the northeast corner of township twenty-four, north, of range twenty-six, west; thence west along the south line of Cherry County to the northwest corner of township twenty-four, north, of range thirty, west; thence south along said range line, to the southwest corner of township twenty-one, north, of range

thirty, west; thence east along the north line of Logan County to the place of beginning.

Source: Laws 1887, c. 24, § 1, p. 347; R.S.1913, § 901; C.S.1922, § 803; C.S.1929, § 25-190.

22-187 Thurston.

The county of Thurston is bounded as follows: Commencing at a point where the west boundary of the Omaha Indian reservation intersects the south line of section thirty-four, township twenty-five, north, range five, east of the sixth principal meridian; thence east to the northeast corner of township twenty-four, north, range seven, east; thence south to the south line of the Omaha Indian reservation as originally surveyed; thence east along said line to the line between sections thirty-two and thirty-three, township twenty-four, north, range ten, east; thence north to the northwest corner of section twenty-one, township twenty-four, north, range ten, east; thence east to the eastern boundary line of the State of Nebraska as established by the Iowa-Nebraska Boundary Compact of 1943; thence in a northwesterly direction along said boundary line to its intersection with the north line of the Winnebago Indian reservation, in township twenty-seven, north, range ten, east; thence west along the north line of said reservation to an intersection with the line between sections thirty-three and thirty-four, township twenty-seven, north, range six, east; thence south to the southwest corner of section thirty-four, township twenty-seven, north, range six, east; thence west to the west boundary of said Winnebago Indian reservation; and thence south along the west line of the Winnebago and Omaha Indian reservations to the place of beginning.

Source: Laws 1889, c. 3, § 1, p. 71; R.S.1913, § 902; Laws 1921, c. 231, § 11, p. 828; C.S.1922, § 804; C.S.1929, § 25-191; R.S.1943, § 22-187; Laws 1955, c. 65, § 7, p. 214.

22-188 Valley.

The county of Valley is bounded as follows: Commencing at the southwest corner of township seventeen, north, of range sixteen, west; thence east to the southeast corner of township seventeen, north, of range thirteen, west; thence north to the northeast corner of township twenty, north, of range thirteen, west; thence west to the northwest corner of township twenty, north, of range sixteen, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 52, p. 222; R.S.1913, § 903; C.S.1922, § 805; C.S.1929, § 25-192.

22-189 Washington.

The county of Washington is bounded as follows: Commencing at the northeast corner of section thirty, township twenty, north, range nine, east; thence east on a line parallel with the dividing line between townships nineteen and twenty, and two miles north of the same, to the eastern boundary line of the State of Nebraska as established by the Iowa-Nebraska Boundary Compact of 1943; thence south along the eastern boundary line of the State of Nebraska to a point where the dividing line between townships sixteen and seventeen intersects the same; thence west to the southeast corner of section thirty-one, township seventeen, north, range ten, east; thence north on section lines three miles, to the northeast corner of section nineteen, township seventeen, north,

range ten, east; thence west on section lines two miles to the southwest corner of section thirteen, township seventeen, range nine, east; thence north on section lines one mile, to northwest corner of section thirteen, last aforesaid; thence west on section line one mile to southwest corner of section eleven, township seventeen, north, range nine, east; thence north on section line one mile, to the northwest corner of said section eleven, last aforesaid; thence west on section lines one mile, to the southwest corner of section three, township seventeen, north, range nine, east; thence north on section lines one mile, to the northwest corner of said section three; thence west on section line one mile, to the northwest corner of section four, township seventeen, north, range nine, east; thence north on section line one mile, to the northeast corner of section thirty-two, township eighteen, north, range nine, east; thence west one-half mile on section line, to the northwest corner of the northeast quarter of section thirty-two, township eighteen, north, range nine, east; thence north on the half section line two miles, to the southeast corner of the southwest quarter of section seventeen, township eighteen, north, range nine, east; thence west on section line one-half mile, to the southwest corner of section seventeen, township eighteen, north, range nine, east; and thence north to the place of beginning.

Source: G.S.1873, c. 12, § 53, p. 222; Laws 1887, c. 25, § 1, p. 348; R.S. 1913, § 904; C.S.1922, § 806; C.S.1929, § 25-193; R.S.1943, § 22-189; Laws 1955, c. 65, § 8, p. 215.

Boundary of state, when middle of river, follows gradual changes, but not sudden changes of channel. Rober v. Michelsen, 82 Neb. 48, 116 N.W. 949 (1908).

22-190 Wayne.

The county of Wayne is bounded as follows: Commencing at the southwest corner of township twenty-five, north, of range one, east; thence east to the southeast corner of section thirty-four, township twenty-five, north, of range five, east; thence north to the northeast corner of section three, township twenty-six, north, of range five, east; thence west to the northeast corner of township twenty-six, north, of range three, east; thence north to the northeast corner of township twenty-seven, north, of range three, east; thence west to the northwest corner of township twenty-seven, north, of range one, east; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 54, p. 222; Laws 1889, c. 2, § 1, p. 70; R.S.1913, § 905; C.S.1922, § 807; C.S.1929, § 25-194.

Boundary of Wayne County was not affected by act of 1881, since boundaries could not be changed without vote of people. Wayne County v. Cobb, 35 Neb. 231, 52 N.W. 1102 (1892).

22-191 Webster.

The county of Webster is bounded as follows: Commencing at the southwest corner of township one, north, of range twelve, west; thence east to the southeast corner of township one, north, of range nine, west; thence north to the northeast corner of township four, north, of range nine, west; thence west to the northwest corner of township four, north, of range twelve, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 55, p. 222; R.S.1913, § 906; C.S.1922, § 808; C.S.1929, § 25-195.

22-192 Wheeler.

The county of Wheeler is bounded as follows: Commencing at the southeast corner of township twenty-one, north, of range nine, west of the sixth principal meridian; running thence north to the northeast corner of township twenty-four, north, of range nine, west; thence west to the northwest corner of township twenty-four, north, of range twelve, west; thence south to the southwest corner of township twenty-one, north, of range twelve, west; thence east to the place of beginning.

Source: Laws 1877, § 2, p. 211; R.S.1913, § 907; C.S.1922, § 809; C.S. 1929, § 25-196.

22-193 York.

The county of York is bounded as follows: Commencing at the southwest corner of township nine, north, of range four, west; thence east to the southeast corner of township nine, north, of range one, west; thence north to the northeast corner of township twelve, north, of range one, west; thence west to the northwest corner of township twelve, north, of range four, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 56, p. 223; R.S.1913, § 908; C.S.1922, § 810; C.S.1929, § 25-197.

22-194 Boundary streams; change in channel; old channel governs.

Where any county is bounded by the middle of the channel of any stream or watercourse, and by reason of any change of such channel any island or tract of land shall be thrown to the other side of such bounding channel, after the original organization and establishment of the boundaries of any county, the old channel of the stream or watercourse shall, for all county and state purposes, be deemed the channel thereof.

Source: Laws 1879, § 3, p. 353; R.S.1913, § 910; C.S.1922, § 812; C.S. 1929, § 25-199.

22-195 County map; how made; where deposited.

A copy of the field notes of the original survey of each county by the United States shall be procured, and a map of the county shall be constructed in accordance therewith on a scale of not less than one inch to a mile, and laid off in townships and sections. Such map and field notes shall be deposited in the office of the county clerk, and be by him preserved. Whenever the boundaries of any county are changed, the necessary alteration in such map may be made, or a new map of the county may be made if the county board so directs.

Source: Laws 1879, § 42, p. 367; R.S.1913, § 911; C.S.1922, § 813; C.S.1929, § 25-1,100.

Monuments of original government survey, if found, control location of section corners. Runkle v. Welty, 86 Neb. 680, 126 N.W. 139 (1910).

22-196 Counties; boundary changes; how effected.

Whenever the county boards of adjoining counties shall desire to submit a proposal for change of the boundaries between such counties, the boards may by resolution entered on their records provide a joint survey and maps of the

existing and proposed boundaries. At the next general election thereafter each of said county boards shall submit the question of the proposed change in boundaries to the qualified voters at such election.

Source: Laws 1921, c. 231, § 12, p. 828; C.S.1922, § 814; C.S.1929, § 25-1,101.

22-197 Counties; boundary changes; election; notice.

Notices of such election shall contain a map of the existing and the proposed boundary with statement of the territory to be transferred and the reasons for such proposed change and shall be posted with the other notices of the general election.

Source: Laws 1921, c. 231, § 13, p. 829; C.S.1922, § 815; C.S.1929, § 25-1,102.

Cross References

For notice of election, see section 32-802.

22-198 Counties; boundary changes; ballot; form; effect.

The ballots used at such election in each county affected shall contain the following form:

For proposed change of county boundaries .....

Against proposed change of county boundaries .....

If the majority of those voting upon the question in each county affected thereby shall be in favor of said proposed change then said proposed boundaries shall be the legal boundaries of said counties on and after the first day of January following such election; *Provided,* all assessments and collections of taxes and judicial or other proceedings commenced prior to said first day of January shall be continued, prosecuted, and completed in the same manner as if no change in boundary had been made.

Source: Laws 1921, c. 231, § 14, p. 829; C.S.1922, § 816; C.S.1929, § 25-1,103.

ARTICLE 2

FORMATION OF NEW COUNTIES

Section
22-201. New county; formation; petition; election.
22-202. New county; formation; officers; election.
22-203. County seat; location; designation on ballot.
22-204. County seat; location; special election.
22-205. Elections; laws governing.
22-206. Township or precinct officers; continuance in office.
22-207. County seat; location; void election; resubmission.
22-208. County seat; location upon public land; site; acquisition.
22-209. County seat; site; surveying; platting.
22-210. County seat; site; lots; sale.
22-211. County seat; site; lots; certificate of purchase.
22-212. County seat; lots; sale; fund; how used.
22-213. Oath of office; counties, when deemed organized; judicial district, how determined.
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22-216. New county; records; how made up.

Section
22-217. New county; records; duty of clerk; evidentiary effect.
22-218. Territory; transfer to another county; petition.
22-219. Territory; transfer to another county; election; notice.
22-220. Territory; transfer to another county; election; ballot; conditions.
22-221. Territory; transfer to another county; debts; adjustment.

22-201 New county; formation; petition; election.

Whenever it is desired to form a new county or counties out of one of the then existing counties, a petition praying for the formation of such new county or counties, stating and describing the territory proposed to be taken for such new county or counties, together with the name of such proposed new county or counties, signed by a majority of the legal voters residing in the territory to be taken from such county, shall be presented to the county board of such county to be affected by such division. If it appears that such new county or counties can be constitutionally formed, and each shall contain not less than four hundred and fifty square miles, it shall be the duty of such county board to make an order providing for the submission of the question of the erection of such new county or counties to a vote of the people of the county to be affected, at the next succeeding general election. The notice shall be given, the votes canvassed, and the returns made up as in the case of election of county officers. The form of the ballot to be used in the determination of such question shall be as follows: For new county, and Against new county.

Source: Laws 1879, § 10, p. 355; Laws 1895, c. 26, § 1, p. 127; R.S.1913, § 912; C.S.1922, § 818; C.S.1929, § 25-201.

Cross References

For canvass and return of votes, see Chapter 32, article 10.
For notice of election, see section 32-802.

Proposition to form two new counties, if conflicting in territory, may not be submitted at same election. State ex rel. Pennell v. Armstrong, 30 Neb. 493, 46 N.W. 618 (1890).

Proposition to form two new counties, not conflicting in territory, may be submitted at same election. State ex rel. Anderson v. Newman, 24 Neb. 40, 38 N.W. 40 (1888).

22-202 New county; formation; officers; election.

If it shall appear that a majority of all the votes cast at any such election in the county interested is in favor of the formation of such new county or counties, the county clerk of the county shall certify the same to the Secretary of State, stating in such certificate the name, territorial contents, and boundaries of such new county or counties. Whereupon the Secretary of State shall notify the Governor of the result of such election, whose duty it shall be to order an election of county officers for such new county or counties, at such time as he shall designate, and he may, when necessary, fix the place of holding election, notice of which shall be given in such manner as the Governor shall direct. At such election the qualified voters of the new county or counties shall elect all county officers for the county or counties, except as hereinafter provided, who shall be commissioned and qualified in the same manner as such officers are in other counties in this state. Such officers shall continue in office until the next general election for such officers, and until their successors are elected and qualified, and they shall have all the jurisdiction and perform all the duties which are or may be conferred upon such officers in other counties in this state.

Source: Laws 1879, § 11, p. 356; Laws 1889, c. 5, § 2, p. 74; Laws 1897, c. 21, § 1, p. 186; R.S.1913, § 913; C.S.1922, § 819; C.S.1929, § 25-202.

Requirement of majority is a constitutional limitation only. State ex rel. Packard v. Nelson, 34 Neb. 162, 51 N.W. 648 (1892).

Jurisdiction and duties of officers over territory included in new county cease on its organization. State ex rel. Malloy v. Clevenger, 27 Neb. 422, 43 N.W. 243 (1889).

Officers hold only until next election or until successors are elected and qualified. State ex rel. Nichols v. Fields, 26 Neb. 393, 41 N.W. 988 (1889).

22-203 County seat; location; designation on ballot.

At such election, provided for by section 22-202, the voters of the county shall determine the permanent location of the county seat. For this purpose each voter may designate on his ballot the place of his choice for the county seat, and when the votes are canvassed, the place having a majority of all the votes polled shall be the county seat, and public notice of the location shall be given by the county board within thirty days, by posting up notices in three several places in each precinct in the county, and a copy of such notice shall be recorded by the county clerk in the book of miscellaneous records.

Source: G.S.1873, c. 12, § 81, p. 229; R.S.1913, § 914; C.S.1922, § 820; C.S.1929, § 25-203.

22-204 County seat; location; special election.

If no one place has a majority of all the votes polled, as provided by section 22-203, it shall be the duty of the county board within one month after the officers elected at the first election have qualified according to law, to order a special election and give ten days' notice thereof by posting up three notices in each precinct in said county, at which election votes shall be taken by ballot between the three highest places voted for at the first election. If no choice is made at such election, notice of another election shall be given as above provided for, to decide between the two places having the highest number of votes in the last election; and the place having the highest number of votes shall be the county seat.

Source: G.S.1873, c. 12, § 83, p. 229; R.S.1913, § 915; C.S.1922, § 821; C.S.1929, § 25-204.

22-205 Elections; laws governing.

The votes for the county officers and for the location of the county seat of said new county cast at the first election, provided for in sections 22-202 and 22-203, shall be canvassed and returns made by the county clerk or county clerks of the county or counties from which the new county was formed, as provided by law in other cases.

Source: Laws 1879, § 13, p. 357; R.S.1913, § 916; C.S.1922, § 822; C.S.1929, § 25-205.

Cross References

For canvass and return of votes, see Chapter 32, article 10.

22-206 Township or precinct officers; continuance in office.

All the township or precinct officers who were previously elected and qualified in the county or counties from which such new county has been formed, whose term of office shall not have expired at the time of the election, and whose residence shall be embraced within the limits of the new county,

shall continue in office until their terms of office shall expire, and until their successors shall be elected and qualified.

Source: Laws 1879, § 12, p. 357; R.S.1913, § 917; C.S.1922, § 823; C.S.1929, § 25-206; R.S.1943, § 22-206; Laws 1972, LB 1032, § 110.

22-207 County seat; location; void election; resubmission.

In any county where an election has been held to determine the permanent location of the county seat of such county, and the election shall be declared void by any court of competent jurisdiction in an action instituted for that purpose, the county board of said county shall submit the question of locating the county seat to the qualified voters of the county at the next general election to be held sixty days after the entering of such judgment, as if no election had ever been held in such county.

Source: G.S.1873, c. 12, § 82, p. 229; Laws 1883, c. 24, § 1, p. 185; R.S.1913, § 918; C.S.1922, § 824; C.S.1929, § 25-207.

22-208 County seat; location upon public land; site; acquisition.

Whenever any county seat shall be located upon any public lands of the United States, it shall be the duty of the county board to enter or purchase a quarter section of land at the place so designated, at the expense of and for the use of the county, within three months thereafter, if the land be subject to private entry; if not, the board shall claim the same as a preemption under the laws of the United States, for the use of the county.

Source: G.S.1873, c. 12, § 85, p. 230; R.S.1913, § 919; C.S.1922, § 825; C.S.1929, § 25-208.

22-209 County seat; site; surveying; platting.

Such lands shall be surveyed into lots, squares, streets and alleys, and platted and recorded in the county clerk's office; and lots necessary for public buildings shall be reserved by the board for that purpose.

Source: G.S.1873, c. 12, § 86, p. 230; R.S.1913, § 920; C.S.1922, § 826; C.S.1929, § 25-209.

22-210 County seat; site; lots; sale.

The remainder of the lots shall be offered at public sale by the sheriff of the county to the highest bidder at such time as the county board may designate. Notice of such sale shall be posted up in three public places of the county. The terms of sale shall be determined by the county board and they may dispose of lots at private sale upon such terms as they may deem best.

Source: G.S.1873, c. 12, § 87, p. 230; R.S.1913, § 921; C.S.1922, § 827; C.S.1929, § 25-210; R.S.1943, § 22-210; Laws 1996, LB 299, § 15.

22-211 County seat; site; lots; certificate of purchase.

Purchasers of the aforesaid lots shall receive a certificate of purchase from the sheriff, entitling the holder to a deed for the same, when payment in full shall be made according to law. If the purchaser of any lot fails to pay for the same within the time required by the county board, not to exceed one year in

any case, the right of the purchaser to such lot shall be forfeited, and the same shall be again sold by the county board as hereinbefore provided.

Source: G.S.1873, c. 12, § 88, p. 230; R.S.1913, § 922; C.S.1922, § 828; C.S.1929, § 25-211.

22-212 County seat; lots; sale; fund; how used.

The proceeds of the sale of such lots, after deducting all necessary expenses, shall be paid into the county treasury and constitute a fund for the erection of public buildings for the use of the county at the county seat, and shall be used for no other purpose whatever.

Source: G.S.1873, c. 12, § 89, p. 230; R.S.1913, § 923; C.S.1922, § 829; C.S.1929, § 25-212.

22-213 Oath of office; counties, when deemed organized; judicial district, how determined.

The oath of office may be administered to the several county officers of such new county by any person authorized by law to administer oaths. As soon as the county officers are duly qualified, the county shall be regarded as legally organized, and for judicial purposes shall be deemed and taken as belonging to the district in which the new county, or the greater part thereof, is embraced, and terms of the district court shall be held at such place in the new county as the county board thereof shall designate, until the county seat thereof shall be permanently located.

Source: Laws 1879, § 14, p. 357; R.S.1913, § 924; C.S.1922, § 830; C.S.1929, § 25-213.

22-214 Judicial proceedings; transfer; judgments and liens, effect.

The courts of any county or counties from which such new county is erected may, by proper order, transfer any suit or other legal proceeding affecting real estate in such new county to the proper court of such new county, or may transfer any suit and all papers and records pertaining thereto to such new county, when all parties thereto are residents of such new county; but all judgments and other liens in the county or counties from which such new county was erected shall have the same effect as if no new county had been erected.

Source: Laws 1879, § 15, p. 357; R.S.1913, § 925; C.S.1922, § 831; C.S.1929, § 25-214.

22-215 County assets and liabilities, how divided.

All the property, both real and personal, and all debts and liabilities and choses in action of every kind belonging to the county or counties from which such new county was formed shall be divided by the several county boards of the counties interested between the county or counties from which such new county is formed and the new county in proportion to the taxable value of property for the last preceding year which has been taken from such original county or counties and carried to such new county. If such boards cannot agree upon such division, they may refer the matters of difference to arbitrators or the right to such property may be settled by a suit in the district court brought by either party for that purpose. In case the property cannot be divided or

removed, the county receiving the same shall pay to the other a proportionate value for the same.

Source: Laws 1879, § 16, p. 358; R.S.1913, § 926; C.S.1922, § 832; C.S.1929, § 25-215; R.S.1943, § 22-215; Laws 1979, LB 187, § 90; Laws 1992, LB 719A, § 91.

Balance in bridge fund divided in proportion to the relative assessed valuation of counties. Western Bridge & Construction Co. v. Cheyenne County, 91 Neb. 206, 136 N.W. 36 (1912).

Balance agreed as due from one county may be sued for without presentation to board. Perkins County v. Keith County, 58 Neb. 323, 78 N.W. 630 (1899).

In action to recover proper proportion of value of real property retained by old county, it is no defense to show that land was originally conveyed by a deed with conditions. Brown County v. Rock County, 51 Neb. 277, 70 N.W. 943 (1897).

22-216 New county; records; how made up.

The county clerk of the new county shall transcribe in books prepared for that purpose, from the records of the county or counties from which the new county is formed, all deeds, mortgages, leases, and title papers of every description, with the certificate of acknowledgment thereto, and the date of filing the same for record, of lands lying in the new county, which were previously recorded in the county or counties from which the new county was formed; and the clerk shall be allowed by such new county such compensation as his services are reasonably worth. The clerk of such new county shall also prepare a numerical index of the lands and lots in such new county in the same manner as county clerks are by law directed to prepare and keep such index.

Source: Laws 1879, § 17, p. 358; R.S.1913, § 927; C.S.1922, § 833; C.S.1929, § 25-216.

Cross References

For numerical index form and contents, see sections 23-1513 and 23-1514.

First county clerk of newly organized county who compiles numerical index is entitled to compensation therefor. Bastedo v. Boyd County, 57 Neb. 100, 77 N.W. 387 (1898).

22-217 New county; records; duty of clerk; evidentiary effect.

The clerk shall note at the end of each paper he shall transcribe the book and page from which the same was transcribed, and shall make a correct double index of the records; and on the completion of his duties he shall return the books to the county clerk of the county or counties from which the new county was formed, with his certificate attached thereto, showing that he has complied with the law; whereupon they shall be taken and considered to all intents and purposes as books of records of deeds, mortgages, and title papers for the new county. Copies of the record, certified by the officer having the custody of the same, shall be evidence in all courts and places, in the same manner that copies of records are evidence in other cases, and with like effect.

Source: Laws 1879, § 18, p. 359; R.S.1913, § 928; C.S.1922, § 834; C.S.1929, § 25-217.

22-218 Territory; transfer to another county; petition.

When a majority of the legal voters, residing upon any territory, shall petition the county board of their own county, and also of the county to which they desire such territory to be transferred, for leave to have such territory transferred to such county, it shall be the duty of the several county boards so petitioned to submit the question at the next general election in the counties;

Provided, no such petition shall be granted until after the expiration of three years from last submission of the question.

Source: Laws 1879, § 4, p. 354; Laws 1885, c. 36, § 1, p. 210; Laws 1889, c. 5, § 1, p. 74; R.S.1913, § 929; C.S.1922, § 835; C.S.1929, § 25-218.

Where county has exercised undisputed jurisdiction for many years over portion of unorganized district under void act, the court, in exercise of sound public policy, will refuse to change boundary line. State ex rel. Halligan v. Clary, 100 Neb. 324, 160 N.W. 107 (1916).

22-219 Territory; transfer to another county; election; notice.

Notices of such election shall contain a description of the territory proposed to be transferred, the names of the counties from and to which such transfer is intended to be made, and shall be posted with the other notices for general elections.

Source: Laws 1879, § 5, p. 354; R.S.1913, § 930; C.S.1922, § 836; C.S. 1929, § 25-219.

22-220 Territory; transfer to another county; election; ballot; conditions.

The ballots used in the elections may be in the following form: For transferring territory, and Against transferring territory. If a majority of the voters voting upon the question in the county from which the territory is proposed to be taken, and a majority of the voters of the county to which the same is proposed to be transferred, shall be For transferring territory, then the territory shall be transferred to and become a part of the county to which it is proposed to transfer the same, on and after the first day of January succeeding such election, and shall be subject to all the laws, rules, and regulations thereof; *Provided,* all assessments and collections of taxes, and judicial or other proceedings commenced prior to the first day of January, shall be continued, prosecuted and completed in the same manner as if no transfer had been made; and all township or precinct officers within the transferred territory shall continue to hold their respective offices within the county to which they may be transferred, until their respective terms of office expire.

Source: Laws 1879, § 6, p. 354; R.S.1913, § 931; C.S.1922, § 837; C.S. 1929, § 25-220.

22-221 Territory; transfer to another county; debts; adjustment.

No transferred territory under the provisions of sections 22-218 to 22-220 shall be released from the payment of its proportion of the debts of the county from which such territory is transferred. Such proportionate indebtedness from such transferred territory shall be collected by the county to which such territory is transferred, at an equal or greater rate than is levied and collected in the county from which such territory was transferred, such rate to be ascertained by the certificate of the county clerk of the last-named county, and when so collected, to be paid over to the county entitled thereto. The territory so transferred shall not be taxed for the payment of any indebtedness of the county to which the territory is transferred, incurred previous to the transfer.

Source: Laws 1879, § 8, p. 355; R.S.1913, § 932; C.S.1922, § 838; C.S. 1929, § 25-221.

ARTICLE 3
RELOCATION OF COUNTY SEAT

Cross References

Constitutional provision:
Legislature shall not pass any law locating or changing county seats, see Article III, section 18, Constitution of Nebraska.

Section
22-301. Petition.
22-302. Election.
22-303. Offices and records; transfer; violations; penalty.

22-301 Petition.

Whenever the inhabitants of any county are desirous of changing their county seat and upon the petition therefor being presented to the county board, which petition shall name some one city, town, village or place to which it is desired to remove the county seat, signed by the resident electors of the county equal in number to three-fifths of all votes cast in the county at the last general election held therein, and containing in addition to the names of the petitioners the section, township and range on which, or the town or city in which the petitioners reside, with their age and time of residence in the county, it shall be the duty of such board to forthwith call a special election in the county for the purpose of submitting to the qualified electors thereof the question of the removal of the county seat to the one city, town, village or place named in the petition.

Source: Laws 1875, § 1, p. 159; R.S.1913, § 939; Laws 1917, c. 169, § 1, p. 380; C.S.1922, § 845; C.S.1929, § 25-301.

22-302 Election.

Notice of the time and place of holding the election shall be given in the same manner, and the election shall be conducted in all respects the same as is provided by the law relating to general elections for county purposes. There shall be printed on the ballots the name of the city, town, village or place which is the present county seat, and the name of the one city, town, village or place to which it is proposed to move the county seat. The electors shall vote for one of the two places named on the ballot, and if the one place to which it is proposed to move the county seat shall receive three-fifths of all the votes cast at the election, such city, town, village or place shall become and remain the county seat of the county from and after the first day of the third month next succeeding such election. The question of relocation and division of any county within the state shall not be again submitted to the electors for the period of ten years from and after the date of any such election.

Source: Laws 1917, c. 169, § 2, p. 380; C.S.1922, § 846; C.S.1929, § 25-302.

22-303 Offices and records; transfer; violations; penalty.

When any such county seat shall have been relocated it shall be the duty of all county officers to forthwith remove their respective offices and all county records and property in their charge to the place where said county seat shall have been relocated. Any county officer who shall refuse to comply with any of the provisions of sections 22-301 to 22-303 shall be guilty of a Class II

misdemeanor, and a conviction of any such officer of such misdemeanor shall work a vacancy in his office.

Source: Laws 1917, c. 169, § 3, p. 381; C.S.1922, § 847; C.S.1929, § 25-303; R.S.1943, § 22-303; Laws 1977, LB 40, § 82.

ARTICLE 4

CONSOLIDATION OF COUNTIES AND OFFICES

Section

22-401 Counties; consolidation, when authorized.

Any two or more adjoining counties in the state may (1) consolidate if the number of counties is reduced, (2) consolidate one or more county or township offices, or (3) provide for the joint performance of any common function or service, by complying with the requirements and procedure specified in sections 22-402 to 22-407. If two or more counties are consolidating, any county or part of a county may be added to an adjoining county or counties.

Source: Laws 1933, c. 34, § 1, p. 217; C.S.Supp.,1941, § 25-401; R.S. 1943, § 22-401; Laws 1951, c. 44, § 1, p. 155; Laws 1996, LB 1085, § 9.

Cross References

Compacts between counties for the joint exercise of powers, see section 23-104.01.

22-402 Consolidation agreement; contents; advisory committee.

(1) The county boards of any two or more adjoining counties may enter into a consolidation agreement for the consolidation of such counties or for the consolidation of one or more county or township offices except the office of county commissioner or county supervisor. The county boards of any two or more adjoining counties may enter into a consolidation agreement for the joint performance of any common function or service. A consolidation agreement shall not be considered an interlocal cooperation agreement pursuant to the Interlocal Cooperation Act.

(2) The consolidation agreement shall include (a) the names of the several counties which propose to consolidate, (b) the name or names under which the counties would consolidate which shall distinguish it from the name of any other county in Nebraska other than the consolidating counties, (c) the manner of financing and allocating all costs associated with the agreement, (d) the property, real and personal, belonging to each county and the fair value thereof in current money of the United States, (e) the indebtedness, bonded and otherwise, of each county and the repayment of the indebtedness after consolidation, (f) the proposed name and location of the county seat of the consolidated county, (g) if the counties have different forms of county organization and government, the proposed form of county organization and government of the consolidated county or counties, and (h) any other terms of the agreement.

(3) If the consolidation agreement provides for the joint performance of any common function or service or the consolidation of one or more county or township offices, the agreement shall also include (a) a description of the function or service which will be performed jointly or the office which will be consolidated, (b) the duration of the agreement, (c) the method for establishing and allocating salaries of holders of consolidated offices, (d) the method for adopting budgets and appropriating money for the joint function, service, or office, (e) the allocation of assets and liabilities pursuant to the agreement, (f) the procedure for amendment of the agreement, (g) the method of withdrawing from the agreement in accordance with section 22-416 and the distribution of assets upon withdrawal, and (h) the method of dissolving the agreement and the distribution of assets or liabilities upon dissolution.

(4) Each county board may appoint an advisory committee composed of three persons to assist the board in the preparation of such agreement.

Source: Laws 1933, c. 34, § 2, p. 217; C.S.Supp.,1941, § 25-402; R.S. 1943, § 22-402; Laws 1951, c. 44, § 2, p. 155; Laws 1996, LB 1085, § 11; Laws 1997, LB 269, § 22.

Cross References

Interlocal Cooperation Act, see section 13-801.

22-402.01 Consolidation agreement; hearing; notice.

The county board of each county proposing to enter into a consolidation agreement shall hold a public hearing on the agreement and shall give notice of the hearing by publication in a newspaper of general circulation in the county once each week for three consecutive weeks prior to the hearing. Final publication shall be within seven calendar days prior to the hearing. The notice shall describe the contents of the agreement and specify that a copy of the agreement may be obtained at no charge at the county clerk's office.

Source: Laws 1996, LB 1085, § 12.

22-402.02 Consolidation agreement; adoption; vote required.

The county board of each county proposing to enter into a consolidation agreement shall adopt the consolidation agreement by a majority vote of the board on the joint or concurrent resolution.

Source: Laws 1996, LB 1085, § 13.

22-402.03 Consolidation of counties or county or township offices; vote required.

If the consolidation agreement provides for the consolidation of counties or for the consolidation of one or more county or township offices, the county board of each county shall submit the consolidation agreement for approval by the registered voters at the next general election or a special election pursuant to sections 22-404 and 22-405.

Source: Laws 1996, LB 1085, § 14; Laws 1997, LB 269, § 23.

22-402.04 Joint performance of common function or service; vote required; when effective.

(1) If the consolidation agreement provides for the joint performance of any common function or service, the county board of each county may submit the consolidation agreement for approval by the registered voters at the next general election or a special election pursuant to sections 22-404 and 22-405.

(2) If a consolidation agreement is adopted by resolution for the joint performance of any common function or service, the agreement becomes effective on the date specified in the agreement.

Source: Laws 1996, LB 1085, § 15; Laws 1997, LB 269, § 24.

22-403 Consolidation; petition; percentage required; duty of board of county commissioners or supervisors; failure to exercise duty, effect.

(1) If the county board has not taken the initiative to enter into a consolidation agreement under section 22-402, the registered voters of the county may require the board to proceed by filing with the county clerk a petition, signed by registered voters of the county equal in number to ten percent of the total vote cast for Governor at the last general election, directing the board to develop a consolidation agreement pursuant to section 22-402 with the county or counties named in the petition.

(2) The county board shall attempt to develop an agreement under section 22-402 with the county or counties named in the petition within six months after the filing date of the petition. Failure by the county board to make a good faith effort to develop an agreement pursuant to the petition constitutes willful neglect of duty for which the members of the board may be removed from office pursuant to sections 23-2001 to 23-2009. If after good faith attempts to develop an agreement the county board is unable to perfect an agreement within six months after the filing date of the petition, the petition is no longer valid.

Source: Laws 1933, c. 34, § 3, p. 218; C.S.Supp.,1941, § 25-403; R.S. 1943, § 22-403; Laws 1965, c. 92, § 1, p. 398; Laws 1996, LB 1085, § 16.

22-404 Consolidation agreement; publication; availability.

When a consolidation agreement is submitted to the voters for approval, the county board of each county entering into a consolidation agreement shall cause a description of the proposed consolidation agreement to be published in its county prior to the election at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county. Final publication in each county shall be within seven calendar days prior to the election pursuant to section 22-405. Each board shall make a copy of the agreement available for inspection at the county clerk's office. A person may obtain a copy of the agreement at no charge upon request at the county clerk's office.

Source: Laws 1933, c. 34, § 4, p. 218; C.S.Supp.,1941, § 25-404; R.S. 1943, § 22-404; Laws 1996, LB 1085, § 17.

22-405 Consolidation; election; laws applicable; ballot; form; majority required; when effective; effect on election to remove county seat.

(1) When the publication of the consolidation agreement in each of the counties is completed, each county board shall submit the question of whether to consolidate as proposed in the consolidation agreement to the registered voters at the next general election or at a special election held on the same day in each of the counties which are parties to the agreement.

(2) For the consolidation of counties, the question shall be submitted to the voters in substantially the following form:

''Shall (name of county in which ballot will be voted) consolidate with (name of other county or counties) according to the consolidation agreement previously adopted in such counties? Yes No''.

(3) For the consolidation of one or more county or township offices, the question shall be submitted to the voters in substantially the following form:

''Shall (name of county in which ballot will be voted) enter the consolidation agreement with (name of other county or counties) for the consolidation of the office of (name of office) according to the consolidation agreement previously adopted in such counties? Yes No''.

(4) For the joint performance of any common function or service, the question shall be submitted to the voters in substantially the following form:

''Shall (name of county in which ballot will be voted) enter the consolidation agreement with (name of other county or counties) for the joint performance of (name of function or service) according to the consolidation agreement previously adopted in such counties? Yes No''.

(5) The election shall be conducted in accordance with the Election Act. The election commissioner or county clerk shall certify the results to each county board involved in the agreement. If a majority of the voters of each county voting on the question submitted vote in favor of the consolidation agreement for the consolidation of counties or for the consolidation of one or more county or township offices, the consolidation agreement shall become effective on the first Thursday after the first Tuesday in January following the next general election in which one or more consolidated county or township officers are first elected, and the terms of the incumbents in the offices involved in the agreement shall be deemed to end on that date. If a majority of the voters of each county voting on the question submitted vote in favor of the consolidation agreement for the joint performance of any common function or service, the

consolidation agreement becomes effective on the date specified in the consolidation agreement.

(6) The submission of the question of consolidation of counties shall not bar submission of the question of the removal of the county seat under sections 22-301 to 22-303, it being the intention that either proposition may be submitted without reference to submission of the other proposition.

Source: Laws 1933, c. 34, § 5, p. 218; C.S.Supp.,1941, § 25-405; R.S. 1943, § 22-405; Laws 1951, c. 44, § 3, p. 156; Laws 1965, c. 92, § 2, p. 399; Laws 1996, LB 1085, § 18; Laws 1997, LB 269, § 25.

22-405.01 Final approval of consolidation agreement; county boards; duties.

On or before September 10 of the year preceding the effective date of a consolidation agreement, the county boards participating in the consolidation agreement shall adopt by joint or concurrent resolution the budget for the portion of the fiscal year in which the consolidation agreement will be effective. As provided in the consolidation agreement, the county boards shall certify to each county clerk the levies or amounts required to be raised by taxation. In the year in which the general election will be held to first elect consolidated county officers, each county board shall, by joint or concurrent resolution and pursuant to the consolidation agreement, (1) fix the salaries of all elected officers, deputies of elected officers, and appointive officers prior to January 15 and (2) adopt, on or before September 10, the budget for the first complete fiscal year that the counties are consolidated and certify to each county clerk the levies or amounts required to be raised by taxation. On or before September 10 of each year for the duration of the consolidation agreement, each county board shall adopt, by joint or concurrent resolution and pursuant to the agreement, the budget for the consolidated function, service, or office and shall certify to each county clerk the levies or amounts required to be raised by taxation.

Source: Laws 1996, LB 1085, § 19; Laws 1997, LB 269, § 26.

22-405.02 Consolidated county officers; county boards; adjust election district boundaries.

On or before February 15 of the year of the general election at which consolidated county officers are to be elected, the county boards of each county involved in the consolidation agreement shall meet and adjust jointly the boundaries for the election districts for the consolidated offices.

Source: Laws 1996, LB 1085, § 20.

22-406 Consolidated counties; officers; election; terms; appointment.

(1) At the next general election held after the election at which consolidation is approved by the voters, the consolidated county officers shall be elected. Their terms shall begin on the first Thursday after the first Tuesday of January after their election, and the terms of the incumbents in the offices involved in the agreement shall be deemed to end on that date. The term of a consolidated officer shall be four years or until his or her successor is elected and qualified, except that the term of a consolidated officer elected in year 2000 or any fourth year thereafter shall be two years or until his or her successor is elected and qualified.

(2) All appointive county officers shall be appointed by the person, board, or authority upon whom the power to appoint such officers in other counties is conferred. The terms of such officers shall commence on the first Thursday after the first Tuesday of January after the first election of officers for the consolidated county or counties and shall continue, unless otherwise removed, until their successors have been appointed and qualified.

Source: Laws 1933, c. 34, § 6, p. 219; C.S.Supp.,1941, § 25-406; R.S. 1943, § 22-406; Laws 1951, c. 44, § 4, p. 158; Laws 1996, LB 1085, § 21.

22-407 Consolidated counties; statutory references; rights and liabilities; books and records; money; congressional and legislative districts.

(1) Upon the effective date of the consolidation agreement for the consolidation of counties, the counties involved in the consolidation agreement shall be treated under the name or names and upon the terms and conditions set forth in the consolidation agreement. Except as provided in subsections (6) through (8) of this section, statutory references to the names of the counties as they existed prior to the consolidation agreement shall be deemed to reference the name or names of the consolidated county or counties as set forth in the consolidation agreement.

(2) All rights, privileges, and franchises of each of the several counties, all real and personal property, all rights-of-way, all other interests, and all debts due on whatever account, as well as other things in action, belonging to each of such counties shall be deemed as transferred to and vested in the consolidated county or counties without further act or deed. All records, books, and documents shall be transferred to and vested in the consolidated county if only one county is formed, or if two or more counties are formed, all books, records, and documents shall be transferred pursuant to the consolidation agreement.

(3) The title to real property, either by deed or otherwise, under the laws of this state vested in any of the counties, shall not be deemed to revert or be in any way impaired by reason of this consolidation, but the rights of creditors and all liens upon the property of any of the counties shall be preserved unimpaired. All prior indebtedness of each county shall remain a charge on the taxable property within the territory of each county as it existed prior to consolidation. A special tax levy shall be assessed on the taxable property within the prior county's boundaries to retire all prior indebtedness for that area.

(4) If there are two or more consolidated counties formed, all money on hand and accounts receivable shall be divided between the consolidated counties pursuant to the consolidation agreement.

(5) Suits may be brought and maintained against such consolidated county or counties in any of the courts of this state in the same manner as against any other county. Pursuant to the consolidation agreement, any action or proceeding pending by or against any of the counties consolidated may be prosecuted to judgment and the consolidated county or counties may be substituted in its place.

(6) The boundaries for townships, school districts, and election districts for offices other than the consolidated offices shall continue as prior to consolidation unless and until changed in accordance with law.

(7) Until changed by law, the same district courts shall continue, though it may result in the consolidated county or counties being a part of two or more districts. All such courts shall, however, be held at the place designated as the county seat of the consolidated county or counties, and each such court and the judge thereof shall continue to have and exercise the same jurisdiction as the court or judge had exercised before such consolidation. If two or more judges have jurisdiction in any consolidated county or counties, they or a majority of them shall exercise the power to appoint officers and fill vacancies as is vested in judges of district courts of other counties.

(8) For the purpose of representation in Congress and in the Legislature, the existing boundaries for congressional and legislative districts shall continue until changed in accordance with law. Such consolidated county or counties shall in all respects, except as provided in sections 22-401 to 22-407, be subject to all the obligations and liabilities imposed and shall possess all the rights, powers, and privileges vested by law in other counties.

Source: Laws 1933, c. 34, § 7, p. 220; C.S.Supp.,1941, § 25-407; R.S. 1943, § 22-407; Laws 1951, c. 44, § 5, p. 158; Laws 1979, LB 187, § 91; Laws 1992, LB 719A, § 92; Laws 1996, LB 1085, § 22.

22-408 Repealed. Laws 1996, LB 1085, § 60.

22-409 Repealed. Laws 1996, LB 1085, § 60.

22-409.01 Repealed. Laws 1996, LB 1085, § 60.

22-410 Repealed. Laws 1996, LB 1085, § 60.

22-411 Approval of consolidation; salary determinations.

Following approval of the consolidation of county or township offices and prior to January 15 of the year in which the general election is held for consolidated offices, the county boards of each county included within such consolidation shall, by joint or concurrent action, establish the salary to be paid to the holder of the consolidated office and shall apportion such salary among the counties in the proportion that the population in each county bears to the population in all such counties or according to the consolidation agreement. In establishing salaries for a consolidated office, the county boards shall use the population of the counties involved according to the most recent federal decennial census. Minimum annual salaries are established by sections 23-1114.02 to 23-1114.07, and the combined population of the counties involved shall be used to determine the class pursuant to section 23-1114.01. The county boards shall further agree upon the actual payment of such salary by a single county and the monthly remittance to such paying county of the proportionate share of each of the other counties.

Source: Laws 1969, c. 139, § 4, p. 639; Laws 1971, LB 44, § 5; Laws 1996, LB 1085, § 23.

22-412 Candidates for consolidated office; election; procedure.

Candidates for the consolidated office shall file with the county clerk or election commissioner of their county of residence. The names of such candidates shall be certified to the appropriate office of each of the other counties to be placed on the primary ballot. At the primary election following the approval

of the consolidation of county or township offices, and in the year prior to the expiration of the office or offices consolidated, the two candidates receiving the greater number of votes for the position of consolidated nonpartisan office shall be nominated. If the consolidated office is under the laws of this state a partisan office, the candidate receiving the greatest number of votes for each political party shall be nominated. The election commissioner or county clerk shall certify the results of the primary election, as well as of the ensuing general election, from his or her county to the election commissioner or county clerk of the county having the largest population involved in the consolidation who shall certify the winner to each of the other counties.

Source: Laws 1969, c. 139, § 5, p. 640; Laws 1971, LB 44, § 6; Laws 1996, LB 1085, § 24.

22-413 Consolidated office; officer; bond; conditions; filing.

An officer of the consolidated counties shall file the same bond required of the same office in a county having a population equivalent to the population of the consolidated counties. Such bond shall be filed in the office of the county clerk of the county designated to make actual payment of his salary and approved by the board of such county. The fact of such filing and approval shall be certified to the county clerk of each of the other consolidated counties.

Source: Laws 1969, c. 139, § 6, p. 640; Laws 1971, LB 44, § 7.

22-414 Officer of consolidated counties; duties.

An officer of consolidated counties shall have the same duties and responsibilities provided by law for the same office in a single county.

Source: Laws 1969, c. 139, § 7, p. 640.

22-415 Officer of consolidated county; legal advisor.

For the purpose of securing necessary legal advice and legal services, the officer of consolidated counties shall be entitled to call upon the county attorney in the county who would have been obligated to provide such advice and services in the particular situation if there were a county officer rather than a consolidated county officer.

Source: Laws 1969, c. 139, § 8, p. 640.

22-416 Consolidated office; withdrawal of county; procedure; effect.

The question of the withdrawal of a county from an agreement for the joint performance of common functions or services or the consolidation of county or township offices shall be placed on the ballot for submission to the voters upon the petition of registered voters equal in number, in the county desiring to so withdraw, to ten percent of the total vote cast for Governor in such county at the preceding general election. The registered voters signing such petitions shall be so distributed as to include ten percent of the registered voters of each of one-half of the voting precincts in the county. Such petitions shall be filed with the election commissioner or county clerk of the county proposed to be withdrawn from the agreement not later than four months preceding the next general election or at a special election. The election commissioner or county clerk shall examine the petitions filed in his or her office to determine whether they are in proper form and signed by a sufficient number of registered voters.

Not later than thirty days after the petitions are filed in his or her office, he or she shall certify the determination to the election commissioner or county clerk of each county which is part of the agreement. If the petitions are in proper form and signed by a sufficient number of registered voters, the question of the withdrawal of the county from the agreement shall be placed on the ballot in the county proposed to be withdrawn from the agreement at the next general election or at a special election called for such purpose and held at least four months after the filing of the petitions. A majority of all votes cast in the affirmative on the question shall be necessary for the withdrawal of the county from the agreement. The election commissioner or county clerk of the county which votes to withdraw from the agreement shall certify the results of the election to the other counties in the agreement. If the agreement involved the consolidation of offices, such withdrawal shall only be effective at the expiration of a term of office of the consolidated counties.

Source: Laws 1969, c. 139, § 9, p. 640; Laws 1971, LB 44, § 8; Laws 1996, LB 1085, § 25; Laws 1997, LB 269, § 27.

22-417 Consolidation of county offices; powers and duties; procedure; hearing; ballot; form; election; term.

(1) Any county may consolidate the office of clerk of the district court, county assessor, county clerk, county engineer, county surveyor, or register of deeds, except that the consolidated officeholder shall meet the qualifications of each office as required by law. The consolidated office shall have the powers and duties provided by law for each office consolidated. The county board may adopt a resolution for the consolidation of any of such offices and submit the issue of the consolidated office to the registered voters for approval at the next general election or at a special election called for such purpose. The county board shall hold a public hearing prior to adoption of a resolution for the consolidation of offices and shall give notice of the hearing by publication in a newspaper of general circulation in the county once each week for three consecutive weeks prior to the hearing. Final publication shall be within seven calendar days prior to the hearing. The notice shall describe the offices to be consolidated and that the holder of the offices to be consolidated shall have his or her term of office end on the first Thursday after the first Tuesday in January following the general election in which the holder of the consolidated office is elected.

(2) The county board shall adopt the resolution for the consolidation of offices by majority vote of the board and shall submit the issue of consolidation to the registered voters for approval at the next general election or at a special election called for such purpose. For each consolidated office submitted for approval, the question shall be submitted to the voters in substantially the following form:

''Shall (name of each office proposed to be consolidated) be consolidated into one consolidated office according to the resolution adopted by the county board of (name of county) on (date of adoption of the resolution by the county board)? Yes No''.

(3) If the majority of the registered voters in the county voting on the question vote in favor of consolidation, the consolidated office shall be filled at the next general election, and the terms of the incumbents shall end on the first

Thursday after the first Tuesday in January following the general election in which the holder of the consolidated office is elected.

(4) The term of a consolidated officer shall be four years or until his or her successor is elected and qualified, except that the term of a consolidated officer elected in the year 2000 or any fourth year thereafter shall be two years or until his or her successor is elected and qualified.

(5) Any election under this section shall be in accordance with the Election Act.

Source: Laws 1996, LB 1085, § 26; Laws 1997, LB 269, § 28.

Cross References

Election Act, see section 32-101.

22-418 Consolidation of counties, offices, or services; county board; duty.

Each county board shall, by January 1, 1998, examine the question of whether property taxes might be reduced through consolidation of counties, offices, or services with another county. The examination shall include a public hearing and a fiscal estimate of property tax savings, if any, anticipated by a consolidation.

Source: Laws 1996, LB 1085, § 10.

CHAPTER 23
COUNTY GOVERNMENT AND OFFICERS

Article.

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ARTICLE 1

GENERAL PROVISIONS

(a) CORPORATE POWERS

Section
23-101. Counties; corporate name.
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23-103. Powers; how exercised.
23-104. Powers.
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23-104.02. Counties containing a city of the primary class; public grounds; powers.
23-104.03. Power to provide protective services.
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(b) POWERS AND DUTIES OF COUNTY BOARD

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(d) BORROWING MONEY TO PAY WARRANTS

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(e) COUNTY ZONING

(f) EMPLOYEES' LIABILITY INSURANCE

(g) DATA PROCESSING EQUIPMENT

(h) INTEREST IN PUBLIC CONTRACTS

(i) MOTOR VEHICLE AND MOTORBOAT SERVICES

(a) CORPORATE POWERS

23-101 Counties; corporate name.

Each county, established in this state according to the laws thereof, shall be a body politic and corporate, by the name and style of The county of ....., and by that name may sue and be sued, plead and shall be impleaded, defend and be defended against, in any court having jurisdiction of the subject matter, either in law or equity, or other place where justice shall be administered.

Source: Laws 1879, § 20, p. 359; R.S.1913, § 948; C.S.1922, § 848; C.S.1929, § 26-101.

1. Status of county
2. Suit by county
3. Suit against county
4. Pleadings
5. Liability of county

1. Status of county

A county is a governmental subdivision of the state, corporate in character, and created and organized for public purposes. Speer v. Kratzenstein, 143 Neb. 310, 12 N.W.2d 360 (1943).

A county is not a ''municipal corporation'', as the term is used in section 7, Article VIII, of the Constitution, and imposition of gasoline tax on counties is not prohibited. State v. Cheyenne County, 127 Neb. 619, 256 N.W. 67 (1934).

A county is a body politic and corporate. Cheney v. County Board of Commissioners of Buffalo County, 123 Neb. 624, 243 N.W. 881 (1932).

A county, even though a body politic and corporate, is a creature of statute and has only such powers as are conferred by Legislature. Lindburg v. Bennett, 117 Neb. 66, 219 N.W. 851 (1928).

2. Suit by county

County is proper party defendant in suit to enjoin collection of alleged void tax. Offutt Housing Co. v. County of Sarpy, 160 Neb. 320, 70 N.W.2d 382 (1955).

County's interest in Supreme Court Reports is not sufficient to maintain replevin. Clifford v. Hall County, 60 Neb. 506, 83 N.W. 661 (1900).

3. Suit against county

A county must be sued in the name designated by statute. Jameson v. Plischke, 184 Neb. 97, 165 N.W.2d 373 (1969).

Suit was brought where no warrant was issued. Strong v. Thurston County, 84 Neb. 86, 120 N.W. 922 (1909).

Action to recover a money judgment upon county warrant may be maintained when the money for payment of such warrant has been collected and wrongfully applied by the county authorities. Thurston County v. McIntyre, 75 Neb. 335, 106 N.W. 217 (1905).

Suit authorized where board has not exclusive jurisdiction. Ayres v. Thurston County, 63 Neb. 96, 88 N.W. 178 (1901).

4. Pleadings

Demurrer is not proper pleading to raise question of authority when suing. Otoe County v. Dorman, 71 Neb. 408, 98 N.W. 1064 (1904).

5. Liability of county

County is not liable for negligent acts of officers unless made so by statute. Hopper v. Douglas County, 75 Neb. 329, 106 N.W. 330 (1905).

23-102 County seal; use.

The board shall procure and keep a seal, with such emblems and devices as it may think proper, which may be either an engraved or ink stamp seal and which shall be the seal of the county, and no other seal shall be used by the county clerk, except where the county clerk is ex officio clerk of the district court, in which case he shall use the seal of said court in all matters and proceedings therein. The impression or representation of said seal by stamp shall be a sufficient sealing in all cases where sealing is required.

Source: Laws 1879, § 46, p. 368; R.S.1913, § 949; C.S.1922, § 849; C.S.1929, § 26-102; R.S.1943, § 23-102; Laws 1971, LB 653, § 2.

23-103 Powers; how exercised.

The powers of the county as a body corporate or politic, shall be exercised by a county board, to wit: In counties under township organization by the board of supervisors, which shall be composed of the town and such other supervisors as are or may be elected pursuant to law; in counties not under township organization by the board of county commissioners. In exercising the powers of

the county, the board of supervisors or the board of county commissioners, as the case may be, may enter into compacts with the respective board or boards of another county or counties to exercise and carry out jointly any power or powers possessed by or conferred by law upon each board separately.

Source: Laws 1879, § 21, p. 359; R.S.1913, § 950; C.S.1922, § 850; C.S.1929, § 26-103; R.S.1943, § 23-103; Laws 1953, c. 48, § 1, p. 173.

Powers of a county are required to be exercised by the county board. State ex rel. Johnson v. County of Gage, 154 Neb. 822, 49 N.W.2d 672 (1951).

County board has plenary jurisdiction to make all contracts for county within scope of powers. Speer v. Kratzenstein, 143 Neb. 310, 12 N.W.2d 360 (1943).

Purchase by commissioners of electric refrigerator for county jail is proper exercise of power. Beadle v. Harmon, 130 Neb. 389, 265 N.W. 18 (1936).

''Body corporate or politic'' construed. Lindburg v. Bennett, 117 Neb. 66, 219 N.W. 851 (1928).

23-104 Powers.

Each county shall have power: (1) To purchase and hold the real and personal estate necessary for the use of the county; (2) to purchase, lease, lease with option to buy, acquire by gift or devise, and hold for the benefit of the county real estate sold by virtue of judicial proceedings in which the county is plaintiff or is interested; (3) to hold all real estate conveyed by general warranty deed to trustees in which the county is the beneficiary, whether the real estate is situated in the county so interested or in some other county or counties of the state; (4) to sell, convey, exchange, or lease any real or personal estate owned by the county in such manner and upon such terms and conditions as may be deemed in the best interest of the county; (5) to enter into compacts with other counties to exercise and carry out powers possessed by or conferred by law upon each county separately; and (6) to make all contracts and to do all other acts in relation to the property and concerns of the county necessary to the exercise of its corporate powers, except that no lease agreement for the rental of equipment shall be entered into if the consideration for all lease agreements for the fiscal year exceeds one-tenth of one percent of the total taxable value of the taxable property of the county.

Source: Laws 1879, § 22, p. 359; Laws 1889, c. 61, § 1, p. 491; R.S.1913, § 951; C.S.1922, § 851; C.S.1929, § 26-104; R.S.1943, § 23-104; Laws 1953, c. 48, § 2, p. 174; Laws 1963, c. 109, § 1, p. 437; Laws 1967, c. 116, § 1, p. 364; Laws 1979, LB 187, § 92; Laws 1992, LB 1063, § 13; Laws 1992, Second Spec. Sess., LB 1, § 13.

1. Powers authorized
2. Powers not authorized
3. Miscellaneous

1. Powers authorized

A county, through its county board, has authority to contract with the state Auditor of Public Accounts to achieve a county audit required by section 23-1608. County of York v. Johnson, 230 Neb. 403, 432 N.W.2d 215 (1988).

Unless otherwise provided for by law, county boards have implied power to employ agents or servants required for county purposes. Thiles v. County Board of Sarpy County, 189 Neb. 1, 200 N.W.2d 13 (1972).

Purchase by commissioners of electric refrigerator for county jail is proper exercise of power. Beadle v. Harmon, 130 Neb. 389, 265 N.W. 18 (1936).

County board's lease for ninety-nine years of county's real estate, not used or needed for actual purposes, is valid. Lindburg v. Bennett, 117 Neb. 66, 219 N.W. 851 (1928).

County board is clothed not only with powers expressly conferred upon them by statute, but also with such powers as are requisite to enable them to discharge official duties devolved upon them by law. Wherry v. Pawnee County, 88 Neb. 503, 129 N.W. 1013 (1911).

County board has the power to pay traveling expenses of county attorney incurred in prosecuting criminal offenses. Berryman v. Schalander, 85 Neb. 281, 122 N.W. 990 (1909).

Unless prohibited by statute, county may sue to enforce all contracts. Johnson County v. Chamberlain Banking House, 74 Neb. 549, 104 N.W. 1061 (1905).

2. Powers not authorized

Selling of crushed rock produced by county to general public was not authorized. State ex rel. Johnson v. County of Gage, 154 Neb. 822, 49 N.W.2d 672 (1951).

Counties are not permitted to indulge in real estate business on competitive basis. City of Grand Island v. Willis, 142 Neb. 686, 7 N.W.2d 457 (1943).

Counties are without power to contract with townships to construct and maintain township roads for an agreed consideration. Lynn v. Kearney County, 121 Neb. 122, 236 N.W. 192 (1931).

3. Miscellaneous

Contract ''concerns'' county which relates or belongs to county, its business or affairs. Speer v. Kratzenstein, 143 Neb. 310, 12 N.W.2d 360 (1943).

23-104.01 Compacts; conditions; limitations; powers.

Compacts between counties for the joint exercise of powers may be made only upon compliance with the following conditions and subject to the following limitations:

(1) The terms of the obligation imposed by the compact shall be reduced to writing, shall be required to be signed by a majority of the board of supervisors or commissioners of each county that is a party thereto, and after being so signed, shall be filed and recorded in the office of the county clerk of each county that is a party thereto;

(2) The powers that may be exercised and the obligations that may be incurred by each party under the compact shall be definitely set forth and specified therein;

(3) The powers that may be contracted to be exercised under the compact shall only be those imposed by law upon the county as such or upon its board of supervisors or county commissioners and shall not extend to or include powers specifically conferred upon and required to be carried out by other elected officers of the county;

(4) The share of the expense to be paid by each county in carrying out the compact shall be allocated and set forth in the compact and provision made for the payment thereof;

(5) Final action upon the allowance and payment of any claims and obligations against each county shall be reserved to and remain a function of the board of supervisors or commissioners of each county that is a party to the compact;

(6) The levy and collection of taxes to pay the claims and obligations allowed shall be reserved to and remain a function of each county that is a party to the contract; and

(7) The compact shall be subject to the Interlocal Cooperation Act.

Source: Laws 1953, c. 48, § 3, p. 174; Laws 1996, LB 1085, § 27.

Cross References

Consolidation of common functions and services, see section 22-401 et seq.
Interlocal Cooperation Act, see section 13-801.

23-104.02 Counties containing a city of the primary class; public grounds; powers.

Any county in which is located a city of the primary class shall have power to purchase, hold, and improve public grounds and parks within the limits of the county, to provide for the protection and preservation of the same, to provide for the planting and protection of shade or ornamental trees, to erect and construct or aid in the erection and construction of statues, memorials, and works of art upon any public grounds, and to receive donations and bequests of money or property for the above purposes in trust or otherwise.

Source: Laws 1961, c. 83, § 1, p. 293.

23-104.03 Power to provide protective services.

Each county shall have the authority (1) to plan, initiate, fund, maintain, administer, and evaluate facilities, programs, and services that meet the rehabilitation, treatment, care, training, educational, residential, diagnostic, evaluation, community supervision, and protective service needs of dependent, aged, blind, disabled, ill, or infirm persons, persons with a mental disorder, and persons with mental retardation domiciled in the county, (2) to purchase outright by installment contract or by mortgage with the power to borrow funds in connection with such contract or mortgage, hold, sell, and lease for a period of more than one year real estate necessary for use of the county to plan, initiate, fund, maintain, administer, and evaluate such facilities, programs, and services, (3) to lease personal property necessary for such facilities, programs, and services, and such lease may provide for installment payments which extend over a period of more than one year, notwithstanding the provisions of section 23-132 or 23-916, (4) to enter into compacts with other counties, state agencies, other political subdivisions, and private nonprofit agencies to exercise and carry out the powers to plan, initiate, fund, maintain, administer, and evaluate such facilities, programs, and services, and (5) to contract for such services from agencies, either public or private, which provide such services on a vendor basis. Compacts with other public agencies pursuant to subdivision (4) of this section shall be subject to the Interlocal Cooperation Act.

Source: Laws 1971, LB 599, § 1; Laws 1972, LB 1266, § 1; Laws 1985, LB 393, § 15; Laws 1986, LB 1177, § 4.

Cross References

Interlocal Cooperation Act, see section 13-801.

23-104.04 Commission on the status of women; establish; fund.

Any county may establish and fund a commission on the status of women. Such commission shall advise the county board on the existence of social, economic, and legal barriers affecting women and ways to eliminate such barriers.

Source: Laws 1980, LB 780, § 1.

Cross References

Nebraska Commission on the Status of Women, see section 81-8,255.

23-104.05 Commission on the status of women; purposes.

The purpose of a commission established under section 23-104.04 shall be to emphasize studying the changing and developing roles of women in American society including:

(1) Recognition of socioeconomic factors that influence the status of women;

(2) Development of individual potential;

(3) Encouragement of women to utilize their capabilities and assume leadership roles;

(4) Coordination of efforts of numerous women's organizations interested in the welfare of women;

(5) Identification and recognition of contributions made by Nebraska women to the community, state, and nation;

(6) Implementation of this section when improved working conditions, financial security, and legal status of both sexes are involved; and

(7) Promotion of legislation to improve any situation when implementation of subdivisions (1) to (6) of this section indicates a need for change.

Source: Laws 1980, LB 780, § 2.

(b) POWERS AND DUTIES OF COUNTY BOARD

23-105 County property; control; duty of county board; annual inventory.

The county boards of the several counties shall have the power to take and have the care and custody of all the real and personal estate owned by the county; and, in connection with the foregoing, to file and to require each county officer of the county to file the annual inventory statements with respect to county personal property, as required by sections 23-346 to 23-350.

Source: Laws 1879, § 23, p. 360; Laws 1887, c. 26, § 1, p. 350; Laws 1905, c. 44, § 1, p. 287; R.S.1913, § 952; Laws 1915, c. 17, § 1, p. 73; C.S.1922, § 852; Laws 1925, c. 93, § 1, p. 273; Laws 1929, c. 60, § 2, p. 231; C.S.1929, § 26-105; Laws 1931, c. 40, § 1, p. 134; Laws 1933, c. 36, § 1, p. 236; Laws 1939, c. 28, § 5, p. 144; Laws 1941, c. 48, § 2, p. 235; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(1), p. 224.

Under former law county had power of examination of its own records and could contract with auditor for that purpose. Campbell v. Douglas County, 142 Neb. 773, 7 N.W.2d 764 (1943).

Purchase by commissioners of electric refrigerator for county jail is proper exercise of power. Beadle v. Harmon, 130 Neb. 389, 265 N.W. 18 (1936).

Where one of county commissioners has moved out of his district into that of another commissioner, and where he continues to act as member of county board, the fact of such removal does not render order of board void. Horton v. Howard, 97 Neb. 575, 150 N.W. 633 (1915).

County as corporate body has power to cancel twenty-five year lease with consent of lessee, and to execute a new lease for a longer period. Lancaster County v. Lincoln Aud. Assn., 87 Neb. 87, 127 N.W. 226 (1910).

Court of equity will not interfere unless board exceeds powers. Roberts v. Thompson, 82 Neb. 458, 118 N.W. 106 (1908).

Board cannot transact business except at regular or special meetings. Morris v. Merrell, 44 Neb. 423, 62 N.W. 865 (1895).

Regular or special meetings must be held at county seat. Merrick County v. Batty, 10 Neb. 176, 4 N.W. 959 (1880).

23-106 County funds; management; establish petty cash fund; purpose; power of county board.

(1) The county board shall manage the county funds and county business except as otherwise specifically provided.

(2) The county board shall have the authority to establish a petty cash fund for such county for the purpose of making payments for subsidiary general operational expenditures and purchases. Such county board shall set, by resolution of the board, the amount of money to be carried in such petty cash fund and the dollar limit of an expenditure from such fund and such amount shall be stated in the fiscal policy of the county board budget message.

Source: Laws 1879, § 23, p. 360; Laws 1887, c. 26, § 1, p. 350; Laws 1905, c. 44, § 1, p. 287; R.S.1913, § 952; Laws 1915, c. 17, § 1, p. 73; C.S.1922, § 852; Laws 1925, c. 93, § 1, p. 273; Laws 1929, c. 60, § 2, p. 231; C.S.1929, § 26-105; Laws 1931, c. 40, § 1, p. 134; Laws 1933, c. 36, § 1, p. 236; Laws 1939, c. 28, § 5, p. 144; Laws 1941, c. 48, § 2, p. 235; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(2), p. 224; R.S.1943, § 23-106; Laws 1976, LB 686, § 1; Laws 1978, LB 643, § 1.

A county board in managing county business may employ necessary agents or servants to carry out duties not imposed by law upon others. Thiles v. County Board of Sarpy County, 189 Neb. 1, 200 N.W.2d 13 (1972).

County board has duty to deduct personal taxes from claims allowed. State ex rel. Bates v. Morgan, 154 Neb. 234, 47 N.W.2d 512 (1951).

County board may make all contracts within scope of powers of county acting as a body corporate. Speer v. Kratzenstein, 143 Neb. 310, 12 N.W.2d 360 (1943).

Board has power to employ and pay for clerical assistance to county attorney. Emberson v. Adams County, 93 Neb. 823, 142 N.W. 294 (1913).

Implied powers of county board stated. Wherry v. Pawnee County, 88 Neb. 503, 129 N.W. 1013 (1911); Berryman v. Schalander, 85 Neb. 281, 122 N.W. 990 (1909).

Powers of board are construed strictly. Morton v. Carlin, 51 Neb. 202, 70 N.W. 966 (1897).

Appointments are not a judicial act of board. Prather v. Hart, 17 Neb. 598, 24 N.W. 282 (1885).

Board has no power to alter amount of fees. Kemerer v. State ex rel. Garber, 7 Neb. 130 (1878).

Contracts should be let to lowest bidder. People ex rel. Putnam v. Commissioners of Buffalo County, 4 Neb. 150 (1875).

23-107 Public grounds and buildings; sale or lease; terms; illegal sale; when validated.

The county board shall have power to make all orders respecting the property of the county; to keep the county buildings insured; to sell the public grounds or buildings of the county, and purchase other properties in lieu thereof; *Provided*, that the county board may, if it deems it for the best interests of the county, sell county property upon such terms of credit as shall be determined upon by resolution of the board; but any deferred payment shall be for not more than two-thirds of the purchase price, which shall be secured by note or notes, and a first mortgage upon the property so sold, and shall draw not less than six percent interest per annum from date until paid, the interest to be paid annually. The county board shall also have the power to sell or negotiate, without recourse upon the county, the notes and mortgages so taken; but they shall not be sold for less than par value including accrued interest. If, for any reason, such sale of the public grounds by a county board was irregular, illegal, or void, and the purchaser of such public grounds or his grantees have been in open, notorious, undisputed, continuous and adverse possession thereof for more than ten years, and during which ten years the county board has not refunded or offered to refund the purchase price, then in all such cases the county board is authorized and empowered and, when requested by the proper person, is required to convey to the purchaser of such grounds or his grantees, by good and sufficient deed without cost, the fee simple title to the public grounds so irregularly or illegally sold.

Source: Laws 1879, § 24, p. 360; Laws 1887, c. 26, § 1, p. 350; Laws 1905, c. 44, § 1, p. 287; R.S.1913, § 952; Laws 1915, c. 17, § 1, p. 73; C.S.1922, § 852; Laws 1925, c. 93, § 1, p. 273; Laws 1929, c. 60, § 2, p. 231; C.S.1929, § 26-105; Laws 1931, c. 40, § 1, p. 134; Laws 1933, c. 36, § 1, p. 236; Laws 1939, c. 28, § 5, p. 144; Laws 1941, c. 48, § 2, p. 235; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(3), p. 224; R.S.1943, § 23-107; Laws 1961, c. 84, § 1, p. 294; Laws 1971, LB 698, § 1; Laws 1975, LB 125, § 1; Laws 1977, LB 363, § 1.

This section is not applicable to property acquired under the Industrial Development Act of 1961. State ex rel. Meyer v. County of Lancaster, 173 Neb. 195, 113 N.W.2d 63 (1962).

Option of lessee to purchase county's land in case of contemplated sale does not avoid lease for ninety-nine years, since no sale is involved. Lindburg v. Bennett, 117 Neb. 66, 219 N.W. 851 (1928).

Board may buy but not mortgage the poor farm. Stewart v. Otoe County, 2 Neb. 177 (1873).

23-107.01 Real estate owned by county; sale or lease; terms and procedures.

(1) Except as provided in section 80-329, any county board has power to sell or lease real estate owned by the county and not required for county purposes at a fair market value regardless of the value of the property. The county board

of such county shall hold an open and public hearing prior to any such sale or lease at which any interested party may appear and speak for or against the sale or lease and raise any issue regarding the fair market value of the property as determined by the county board. Public notice of any such public hearing shall be run once each week for two consecutive weeks prior to the hearing date in any newspaper or legal publication distributed generally throughout the county.

(2) The county board shall set a date of sale which shall be within two months of the date of public hearing pursuant to subsection (1) of this section and shall offer such real estate for sale or lease to the highest bidder.

(3) The county board shall cause to be printed and published once at least ten days prior to the sale or lease in a legal newspaper in the county an advertisement for bids on the property to be sold or leased. The advertisement shall state the legal description and address of the real estate and that the real estate shall be sold or leased to the highest bidder.

(4) If the county board receives no bids or if the bids received are substantially lower than the fair market value, the county board may negotiate a contract for sale or lease of the real estate if such negotiated contract is in the best interests of the county.

Source: Laws 1975, LB 125, § 2; Laws 1976, LB 805, § 1; Laws 1979, LB 187, § 93; Laws 1980, LB 184, § 10; Laws 1997, LB 396, § 1.

23-108 Roads; establishment; abandonment; eminent domain.

The county board shall have power to lay out, alter or discontinue any road running through its county, to vacate or discontinue public roads running parallel and adjacent to state or federal highways not more than four hundred yards from said highway, or any part thereof, or any abandoned or unused road or part thereof, and for such purpose may acquire title to lands therein, either by gift, prescription, dedication, the exercise of the right of eminent domain, purchase or lease, and may perform such duties concerning roads as may be prescribed by law; *Provided,* that the county board shall not vacate or discontinue any public road or any part thereof which is within the area of the zoning jurisdiction of a city of the metropolitan, primary or first class without the prior approval of the governing body of such city.

Source: Laws 1879, § 23, p. 360; Laws 1887, c. 26, § 1, p. 351; Laws 1905, c. 44, § 1, p. 288; R.S.1913, § 952; Laws 1915, c. 17, § 1, p. 73; C.S.1922, § 852; Laws 1925, c. 93, § 1, p. 274; Laws 1929, c. 60, § 2, p. 232; C.S.1929, § 26-105; Laws 1931, c. 40, § 1, p. 135; Laws 1933, c. 36, § 1, p. 236; Laws 1939, c. 28, § 5, § 145; Laws 1941, c. 48, § 2, p. 236; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(4), p. 225; R.S.1943, § 23-108; Laws 1971, LB 192, § 1.

Cross References

For acquisition of property by eminent domain for county road purposes, see section 39-1701 et seq.

Dedication of road was not sufficiently shown. Nelson v. Reick, 96 Neb. 486, 148 N.W. 331 (1914).

23-109 Claims; audit; settlement; imprest system of accounting.

(1) The county board shall have power to examine and settle all accounts against the county and all accounts concerning the receipts and expenditures of the county.

(2) The county board may adopt by resolution an imprest system of accounting for the county and authorize the county clerk to establish an imprest vendor, payroll, or other account for the payment of county warrants in accordance with any guidelines issued by the Auditor of Public Accounts.

Source: Laws 1879, § 23, p. 360; Laws 1887, c. 26, § 1, p. 351; Laws 1905, c. 44, § 1, p. 288; R.S.1913, § 952; Laws 1915, c. 17, § 1, p. 74; C.S.1922, § 852; Laws 1925, c. 93, § 1, p. 274; Laws 1929, c. 60, § 2, p. 232; C.S.1929, § 26-105; Laws 1931, c. 40, § 1, p. 135; Laws 1933, c. 36, § 1, p. 237; Laws 1939, c. 28, § 5, p. 145; Laws 1941, c. 48, § 2, p. 236; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(5), p. 225; R.S.1943, § 23-109; Laws 1997, LB 34, § 1.

Even though county board acts ministerially in allowing claim, it has authority to deduct unpaid personal taxes. State ex rel. Bates v. Morgan, 154 Neb. 234, 47 N.W.2d 512 (1951).

Board may audit and settle claims when work is completed though no warrant may issue until after levy has been made. Central Bridge & Construction Co. v. Saunders County, 106 Neb. 484, 184 N.W. 220 (1921).

Claims for tort or for unliquidated damages may be filed with county board. Wherry v. Pawnee County, 88 Neb. 503, 129 N.W. 1013 (1911).

County boards are given power to examine and settle all accounts against the county. Cass County v. Sarpy County, 83 Neb. 435, 119 N.W. 685 (1909).

Allowance of claims when no money is in treasury or tax levy made does not exceed powers. State ex rel. McDonald v. Farrington, 80 Neb. 628, 114 N.W. 1100 (1908).

Power to act upon claims is derived from this section. State ex rel. Thomas Clock Co. v. Board of County Comrs. of Cass County, 60 Neb. 566, 83 N.W. 733 (1900).

Order disallowing claims, reconsidered, is not an adjudication. Dean v. Saunders County, 55 Neb. 759, 76 N.W. 450 (1898).

Board acts judicially in allowance of claims. Heald v. Polk County, 46 Neb. 28, 64 N.W. 376 (1895).

Board may disallow claims. Boone County v. Armstrong, 23 Neb. 764, 37 N.W. 626 (1888).

23-110 City or village plat; vacation.

The county board shall have power to authorize the vacation of any city or village plat when the same is not within an incorporated city or village, on the petition of two-thirds of the owners thereof.

Source: Laws 1879, § 23, p. 360; Laws 1887, c. 26, § 1, p. 351; Laws 1905, c. 44, § 1, p. 288; R.S.1913, § 952; Laws 1915, c. 17, § 1, p. 74; C.S.1922, § 852; Laws 1925, c. 93, § 1, p. 274; Laws 1929, c. 60, § 2, p. 232; C.S.1929, § 26-105; Laws 1931, c. 40, § 1, p. 135; Laws 1933, c. 36, § 1, p. 237; Laws 1939, c. 28, § 5, p. 145; Laws 1941, c. 48, § 2, p. 236; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(6), p. 225.

23-111 City or village plat; change; when authorized.

The county board shall have power to change the name of any city or village plat on the petition of a majority of the local voters residing therein, when the inhabitants thereof have not become a body corporate.

Source: Laws 1879, § 23, p. 360; Laws 1887, c. 26, § 1, p. 351; Laws 1905, c. 44, § 1, p. 288; R.S.1913, § 952; Laws 1915, c. 17, § 1, p. 74; C.S.1922, § 852; Laws 1925, c. 93, § 1, p. 273; Laws 1929, c. 60, § 2, p. 232; C.S.1929, § 26-105; Laws 1931, c. 40, § 1, p. 135; Laws 1933, c. 36, § 1, p. 237; Laws 1939, c. 28, § 5, p. 145; Laws 1941, c. 48, § 2, p. 236; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(7), p. 225.

23-112 Claims or judgments; power to compromise.

The county board shall have power to settle by compromise or by accepting in full settlement thereof less than the face or full amount on any claim,

judgment or demand in favor of the county, on which said claim, judgment or demand no payment or payments have been made or recovered during a full period of five years from and after the date or dates on which said claim, judgment or demand became due and enforceable, and execute full acquittance or receipt for said claim, judgment or demand, or to sell, at public or private sale, any claim, judgment or demand in favor of a county for cash, at the best price obtainable in the judgment of said board, and execute and deliver a proper transfer or assignment of said claim, judgment or demand so sold; *Provided,* that no member of the board may be personally interested, directly or indirectly, in the purchase of any such claim, judgment or demand.

Source: Laws 1915, c. 17, § 1, p. 74; C.S.1922, § 852; Laws 1925, c. 93, § 1, p. 274; Laws 1929, c. 60, § 2, p. 232; C.S.1929, § 26-105; Laws 1931, c. 40, § 1, p. 135; Laws 1933, c. 36, § 1, p. 237; Laws 1939, c. 28, § 5, p. 145; Laws 1941, c. 48, § 2, p. 235; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(8), p. 225.

23-113 Transferred to section 12-805.

23-113.01 Transferred to section 12-806.

23-113.02 Transferred to section 12-806.01.

23-113.03 County board; general duties.

The county board shall have power as a board, or as individuals, to perform such other duties as may from time to time be imposed by general law.

Source: Laws 1943, c. 57, § 1(14), p. 227; R.S.1943, § 23-116.02; R.S. 1943, (1987), § 23-116.02.

23-114 Zoning regulations; when authorized; powers; manufactured homes; limitation of jurisdiction.

(1) The county board shall have power: (a) To provide for temporary zoning as provided in sections 23-115 to 23-115.02; (b) to create a planning commission with the powers and duties set forth in sections 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376; (c) to make, adopt, amend, extend, and implement a county comprehensive development plan; (d) to adopt a zoning resolution, which shall have the force and effect of law; and (e) to cede and transfer jurisdiction pursuant to section 13-327 over land otherwise subject to the authority of the county board pursuant to this section.

(2) The zoning resolution may regulate and restrict: (a) The location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, house trailers, and automobile trailers; (b) the percentage of lot areas which may be occupied; (c) building setback lines; (d) sizes of yards, courts, and other open spaces; (e) the density of population; (f) the uses of buildings; and (g) the uses of land for agriculture, forestry, recreation, residence, industry, and trade, after considering factors relating to soil conservation, water supply conservation, surface water drainage and removal, or other uses in the unincorporated area of the county. If a zoning resolution or regulation affects the Niobrara scenic river corridor as defined in section 72-2006, the Niobrara Council shall act on the measure as provided in section 72-2010.

(3)(a) The county board shall not adopt or enforce any zoning resolution or regulation which prohibits the use of land for a proposed residential structure for the sole reason that the proposed structure is a manufactured home if such manufactured home bears an appropriate seal which indicates that it was constructed in accordance with the standards of the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, the Nebraska Uniform Standards for Modular Housing Units Act, or the United States Department of Housing and Urban Development. The county board may require that a manufactured home be located and installed according to the same standards for foundation system, permanent utility connections, setback, and minimum square footage which would apply to a site-built, single-family dwelling on the same lot. The county board may also require that manufactured homes meet the following standards:

(i) The home shall have no less than nine hundred square feet of floor area;

(ii) The home shall have no less than an eighteen-foot exterior width;

(iii) The roof shall be pitched with a minimum vertical rise of two and one-half inches for each twelve inches of horizontal run;

(iv) The exterior material shall be of a color, material, and scale comparable with those existing in residential site-built, single-family construction;

(v) The home shall have a nonreflective roof material which is or simulates asphalt or wood shingles, tile, or rock; and

(vi) The home shall have wheels, axles, transporting lights, and removable towing apparatus removed.

(b) The county board may not require additional standards unless such standards are uniformly applied to all single-family dwellings in the zoning district.

(c) Nothing in this subsection shall be deemed to supersede any valid restrictive covenants of record.

(4) For purposes of this section, manufactured home shall mean (a) a factory-built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280 et seq., promulgated by the United States Department of Housing and Urban Development, or (b) a modular housing unit as defined in section 71-1557 bearing a seal in accordance with the Nebraska Uniform Standards for Modular Housing Units Act.

(5) Special districts or zones may be established in those areas subject to seasonal or periodic flooding, and such regulations may be applied as will minimize danger to life and property.

(6) The powers conferred by this section shall not be exercised within the limits of any incorporated city or village nor within the area over which a city or village has been granted or ceded zoning jurisdiction and is exercising such jurisdiction. At such time as a city or village exercises control over an unincorporated area by the adoption or amendment of a zoning ordinance, the

ordinance or amendment shall supersede any resolution or regulation of the county.

Source: Laws 1941, c. 48, § 2, p. 237; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(10), p. 226; R.S.1943, § 23-114; Laws 1957, c. 381, § 1, p. 1325; Laws 1967, c. 117, § 1, p. 366; Laws 1994, LB 511, § 4; Laws 1996, LB 1044, § 57; Laws 1998, LB 1073, § 6; Laws 1999, LB 822, § 4; Laws 2000, LB 1234, § 10; Laws 2002, LB 729, § 12.

Cross References

Nebraska Uniform Standards for Modular Housing Units Act, see section 71-1555.
Uniform Standard Code for Manufactured Homes and Recreational Vehicles, see section 71-4601.

If there is a conflict between a comprehensive plan and a zoning ordinance, the latter is controlling when questions of a citizen's property rights are at issue. Stones v. Plattsmouth Airport Authority, 193 Neb. 552, 228 N.W.2d 129 (1975).

City zoning plan covering property within two miles of city limits supersedes county zoning regulations respecting that area. Deans v. West, 189 Neb. 518, 203 N.W.2d 504 (1973).

Owner's right to use property is subject to reasonable regulation; the burden is on one who attacks the validity of a zoning ordinance to prove facts which establish its invalidity. Stahla v. Board of Zoning Adjustment of Hall County, 186 Neb. 219, 182 N.W.2d 209 (1970).

County board has authority to adopt zoning resolution. City of Grand Island v. Ehlers, 180 Neb. 331, 142 N.W.2d 770 (1966).

Counties are empowered to adopt a comprehensive zoning plan by resolution. Crane v. Board of County Commissioners of Sarpy County, 175 Neb. 568, 122 N.W.2d 520 (1963).

Zoning resolution adopted by county board must be published. Board of Commissioners of Sarpy County v. McNally, 168 Neb. 23, 95 N.W.2d 153 (1959).

23-114.01 County planning commission; appointment; qualifications; terms; vacancies; compensation; expenses; powers; duties; appeal.

(1) In order to avail itself of the powers conferred by section 23-114, the county board shall appoint a planning commission to be known as the county planning commission. The members of the commission shall be residents of the county to be planned and shall be appointed with due consideration to geographical and population factors. Since the primary focus of concern and control in county planning and land-use regulatory programs is the unincorporated area, a majority of the members of the commission shall be residents of unincorporated areas, except that this requirement shall not apply to joint planning commissions. Members of the commission shall hold no county or municipal office, except that a member may also be a member of a city, village, or other type of planning commission. The term of each member shall be three years, except that approximately one-third of the members of the first commission shall serve for terms of one year, one-third for terms of two years, and one-third for terms of three years. All members shall hold office until their successors are appointed. Members of the commission may be removed by a majority vote of the county board for inefficiency, neglect of duty, or malfeasance in office or other good and sufficient cause upon written charges being filed with the county board and after a public hearing has been held regarding such charges. Vacancies occurring otherwise than through the expiration of terms shall be filled for the unexpired terms by individuals appointed by the county board. Members of the commission shall be compensated for their actual and necessary expenses incurred in connection with their duties in an amount to be fixed by the county board. Reimbursement for mileage shall be made at the rate provided in section 81-1176. Each county board may provide a per diem payment for members of the commission of not to exceed fifteen dollars for each day that each such member attends meetings of the commission or is engaged in matters concerning the commission, but no member shall receive more than one thousand dollars in any one year. Such per diem payments shall be in addition to and separate from compensation for expenses.

(2) The commission: (a) Shall prepare and adopt as its policy statement a comprehensive development plan and such implemental means as a capital improvement program, subdivision regulations, building codes, and a zoning resolution; (b) shall consult with and advise public officials and agencies, public utilities, civic organizations, educational institutions, and citizens relating to the promulgation of implemental programs; (c) may delegate authority to any of the groups named in subdivision (b) of this subsection to conduct studies and make surveys for the commission; and (d) shall make preliminary reports on its findings and hold public hearings before submitting its final reports. The county board shall not hold its public meetings or take action on matters relating to the comprehensive development plan, capital improvements, building codes, subdivision development, or zoning until it has received the recommendations of the commission.

(3) The commission may, with the consent of the governing body, in its own name: Make and enter into contracts with public or private bodies; receive contributions, bequests, gifts, or grants of funds from public or private sources; expend the funds appropriated to it by the county board; employ agents and employees; and acquire, hold, and dispose of property. The commission may, on its own authority: Make arrangements consistent with its program; conduct or sponsor special studies or planning work for any public body or appropriate agency; receive grants, remuneration, or reimbursement for such studies or work; and at its public hearings, summon witnesses, administer oaths, and compel the giving of testimony.

(4) In all counties in the state, the county planning commission may grant conditional uses or special exceptions to property owners for the use of their property if the county board of commissioners or supervisors has officially and generally authorized the commission to exercise such powers and has approved the standards and procedures the commission adopted for equitably and judiciously granting such conditional uses or special exceptions. The granting of a conditional use permit or special exception shall only allow property owners to put their property to a special use if it is among those uses specifically identified in the county zoning regulations as classifications of uses which may require special conditions or requirements to be met by the owners before a use permit or building permit is authorized. The applicant for a conditional use permit or special exception for a livestock operation specifically identified in the county zoning regulations as a classification of use which may require special conditions or requirements to be met within an area of a county zoned for agricultural use may request a determination of the special conditions or requirements to be imposed by the county planning commission or by the county board of commissioners or supervisors if the board has not authorized the commission to exercise such authority. Upon request the commission or board shall issue such determination of the special conditions or requirements to be imposed in a timely manner. Such special conditions or requirements to be imposed may include, but are not limited to, the submission of information that may be separately provided to state or federal agencies in applying to obtain the applicable state and federal permits. The commission or the board may request and review, prior to making a determination of the special conditions or requirements to be imposed, reasonable information relevant to the conditional use or special exception. If a determination of the special conditions or requirements to be imposed has been made, final permit approval may be withheld subject only to a final review by the commission or

county board to determine whether there is a substantial change in the applicant's proposed use of the property upon which the determination was based and that the applicant has met, or will meet, the special conditions or requirements imposed in the determination. For purposes of this section, substantial change shall include any significant alteration in the original application including a significant change in the design or location of buildings or facilities, in waste disposal methods or facilities, or in capacity.

(5) The power to grant conditional uses or special exceptions as set forth in subsection (4) of this section shall be the exclusive authority of the commission, except that the county board of commissioners or supervisors may choose to retain for itself the power to grant conditional uses or special exceptions for those classifications of uses specified in the county zoning regulations. The county board of commissioners or supervisors may exercise such power if it has formally adopted standards and procedures for granting such conditional uses or special exceptions in a manner that is equitable and which will promote the public interest. An appeal of a decision by the county planning commission or county board of commissioners or supervisors regarding a conditional use or special exception shall be made to the district court.

(6) Whenever a county planning commission or county board is authorized to grant conditional uses or special exceptions pursuant to subsection (4) or (5) of this section, the planning commission or county board shall, with its decision to grant or deny a conditional use permit or special exception, issue a statement of factual findings arising from the record of proceedings that support the granting or denial of the conditional use permit or special exception. If a county planning commission's role is advisory to the county board, the county planning commission shall submit such statement with its recommendation to the county board as to whether to approve or deny a conditional use permit or special exception.

Source: Laws 1967, c. 117, § 2, p. 366; Laws 1975, LB 410, § 22; Laws 1978, LB 186, § 8; Laws 1981, LB 204, § 21; Laws 1982, LB 601, § 1; Laws 1991, LB 259, § 1; Laws 1996, LB 1011, § 6; Laws 2003, LB 754, § 3; Laws 2004, LB 973, § 3.

If there is a conflict between a comprehensive plan and a zoning ordinance, the latter is controlling when questions of a citizen's property rights are at issue. Stones v. Plattsmouth Airport Authority, 193 Neb. 552, 228 N.W.2d 129 (1975).

23-114.02 Comprehensive development plan; purpose.

The general plan for the improvement and development of the county shall be known as the comprehensive development plan and shall, among other elements, include:

(1) A land-use element which designates the proposed general distribution, general location, and extent of the uses of land for agriculture, housing, commerce, industry, recreation, education, public buildings and lands, and other categories of public and private use of land;

(2) The general location, character, and extent of existing and proposed major streets, roads, and highways, and air and other transportation routes and facilities; and

(3) The general location, type, capacity, and area served of present and projected or needed community facilities including recreation facilities, schools, libraries, other public buildings, and public utilities and services.

The comprehensive development plan shall consist of both graphic and textual material and shall be designed to accommodate anticipated long-range future growth which shall be based upon documented population and economic projections.

Source: Laws 1967, c. 117, § 3, p. 368.

23-114.03 Zoning regulations; purpose; districts.

Zoning regulations shall be adopted or amended by the county board only after the adoption of the county comprehensive development plan by the county board and the receipt of the planning commission's specific recommendations or by adopting temporary zoning as provided in sections 23-115 to 23-115.02. Such zoning regulations shall be consistent with an adopted comprehensive development plan and designed for the purpose of promoting the health, safety, morals, convenience, order, prosperity, and welfare of the present and future inhabitants of Nebraska, including, among others, such specific purposes as:

(1) Developing both urban and nonurban areas;

(2) Lessening congestion in the streets or roads;

(3) Reducing the waste of excessive amounts of roads;

(4) Securing safety from fire and other dangers;

(5) Lessening or avoiding the hazards to persons and damage to property resulting from the accumulation or runoff of storm or flood waters;

(6) Providing adequate light and air;

(7) Preventing excessive concentration of population and excessive and wasteful scattering of population or settlement;

(8) Promoting such distribution of population, such classification of land uses, and such distribution of land development as will assure adequate provisions for transportation, water flowage, water supply, drainage, sanitation, recreation, soil fertility, food supply, and other public requirements;

(9) Protecting the tax base;

(10) Protecting property against blight and depreciation;

(11) Securing economy in governmental expenditures;

(12) Fostering the state's agriculture, recreation, and other industries;

(13) Encouraging the most appropriate use of land in the county; and

(14) Preserving, protecting, and enhancing historic buildings, places, and districts.

Within the area of jurisdiction and powers established by section 23-114, the county board may divide the county into districts of such number, shape, and area as may be best suited to carry out the purposes of this section and regulate, restrict, or prohibit the erection, construction, reconstruction, alteration, or use of nonfarm buildings or structures and the use, conditions of use, or occupancy of land. All such regulations shall be uniform for each class or kind of land or buildings throughout each district, but the regulations in one district may differ from those in other districts. An official map or maps indicating the districts and regulations shall be adopted, and within fifteen days after adoption of such regulations or maps, they shall be published in book or pamphlet form or once in a legal newspaper published in and of general circulation in the county or, if none is published in the county, in a legal newspaper of general

circulation in the county. Such regulations shall also be spread in the minutes of the proceedings of the county board and such map or maps filed with the county clerk. The county board may decide whether buildings located on farmsteads used as residences shall be subject to such county's zoning regulations and permit requirements.

For purposes of this section and section 23-114.04, nonfarm buildings are all buildings except those buildings utilized for agricultural purposes on a farmstead of twenty acres or more which produces one thousand dollars or more of farm products each year.

Source: Laws 1967, c. 117, § 4, p. 368; Laws 1986, LB 960, § 18; Laws 1999, LB 822, § 5; Laws 2001, LB 366, § 1; Laws 2006, LB 808, § 6.

The farm building exemption contained in this section prohibits counties from requiring building permits on buildings utilized for agricultural purposes on a farmstead of 20 acres or more which produces $1,000 or more of farm products per year. Premium Farms v. County of Holt, 263 Neb. 415, 640 N.W.2d 633 (2002).

An official zoning map or a zoning plan adopted as part of county zoning regulations which incorporate the map by reference must be published in book or pamphlet form or in legal newspaper. Deans v. West, 189 Neb. 518, 203 N.W.2d 504 (1973).

Under the 1967 act, a county engaged in zoning ought to adopt a comprehensive development plan within a reasonable time. Bagley v. County of Sarpy, 189 Neb. 393, 202 N.W.2d 841 (1972).

23-114.04 Zoning regulations; enforcement; county zoning administrator; appoint; compensation; permits; fees.

(1) The county board shall provide for enforcement of the zoning regulations within its county by requiring the issuance of permits prior to the erection, construction, reconstruction, alteration, repair, or conversion of any nonfarm building or structure within a zoned area, and the county board may provide for the withholding of any permit if the purpose for which it is sought would conflict with zoning regulations adopted for the particular district in which the building or structure is situated or in which it is proposed to be erected. All plats for subdivisions in the area outside the corporate limits of cities and villages and outside of an unincorporated area wherein a city or village has been granted subdivision jurisdiction and is exercising such jurisdiction must be approved by the county planning commission.

(2) The county board may establish and appoint a county zoning administrator, who may also serve as a building inspector, and may fix his compensation or may authorize any administrative official of the county to assume the functions of such position in addition to his regular duties. The county board may also fix a reasonable schedule of fees for the issuance of permits under the provisions of subsection (1) of this section. The permits shall not be issued unless the plans of and for the proposed erection, construction, reconstruction, alteration, use or change of use, including sanitation, plumbing and sewage disposal, are filed in writing in the building inspector's office and such plans fully conform to all zoning regulations then in effect.

Source: Laws 1967, c. 117, § 5, p. 370; Laws 1975, LB 410, § 23.

23-114.05 County zoning; violations; penalty; injunction.

The erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use of any building, structure, automobile trailer, or land in violation of sections 23-114 to 23-115.02, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376 or of any regulation made by the county board under such sections shall be a misdemeanor. Any person, partnership,

limited liability company, association, club, or corporation violating such sections or any regulation of the county board or erecting, constructing, reconstructing, altering, or converting any structure without having first obtained a permit shall be guilty of a Class III misdemeanor. Each day such violation continues after notice of violation has been given to the offender may be considered a separate offense. In addition to other remedies, the county board or the proper local authorities of the county, as well as any owner or owners of real estate within the district affected by the regulations, may institute any appropriate action or proceedings to prevent such unlawful construction, erection, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, or to prevent the illegal act, conduct, business, or use in or about such premises. Any taxpayer or taxpayers of the county may institute proceedings to compel specific performance by the proper official or officials of any duty imposed by such sections or in resolutions adopted pursuant to such sections.

Source: Laws 1967, c. 117, § 6, p. 370; Laws 1975, LB 410, § 24; Laws 1977, LB 40, § 83; Laws 1991, LB 15, § 10; Laws 1993, LB 121, § 162; Laws 1999, LB 822, § 6.

This section provides a procedure whereby ''affected'' owners of real estate may petition to enjoin proposed solid waste disposal operations alleged to be in violation of county zoning ordinances. Omaha Fish and Wildlife Club, Inc. v. Community Refuse, Inc., 208 Neb. 110, 302 N.W.2d 379 (1981).

County brought action hereunder against municipal airport authority seeking to enforce county zoning regulations. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

Since a request for specific performance is outside the scope of a petition in error, a proceeding for specific performance under this section may not be instituted by a petition in error. Griess v. Clay Cty. Bd. of Supervisors, 11 Neb. App. 910, 662 N.W.2d 638 (2003).

23-115 Temporary zoning regulations; procedure.

In a county which, prior to January 1, 2000, has appointed a planning commission and is preparing or has adopted a comprehensive development plan that has not been implemented, a county board may adopt temporary zoning regulations by resolution after appropriate notice and hearing. Notice of the hearing shall be given in a newspaper of general circulation in the county at least one time at least ten days prior to the hearing. A copy of the proposed temporary zoning regulations, including any resolution, map, or regulations, shall be available for inspection during regular business hours at the office of the county clerk at least ten days prior to the hearing.

Source: Laws 1999, LB 822, § 1.

23-115.01 Temporary zoning regulations; requirements.

Temporary zoning regulations adopted pursuant to section 23-115:

(1) Shall consist of zoning regulations which have been adopted by or are in use in another county from no more than five of the geographically closest zoned counties. The county board may adopt an entire set of zoning regulations from one county or may adopt portions of the zoning regulations from each county;

(2) May not implement a moratorium on livestock waste control facilities;

(3) May not impact any land use existing and lawful at the time temporary zoning is adopted;

(4) May implement setbacks for livestock operations or livestock facilities of no more than one-half mile from the nearest occupied residence, other than

that occupied by the owner or operator, or with the consent of the residence owner; and

(5) May prohibit livestock operations or livestock facilities to be located within one mile of an incorporated city or village or a concentration of ten or more residences within one-quarter square mile.

Source: Laws 1999, LB 822, § 2.

23-115.02 Temporary zoning regulations; expiration.

Any temporary zoning regulations adopted pursuant to section 23-115 shall expire July 1, 2001.

Source: Laws 1999, LB 822, § 3.

23-116 Insect pests; plant diseases; control; cooperation with federal and state agencies.

The county board shall have power to cooperate with the Nebraska Department of Agriculture, the University of Nebraska Institute of Agriculture and Natural Resources, or the United States Department of Agriculture in the control or eradication of insect pests or plant diseases for the protection of agricultural or horticultural crops within the county and to expend money from the general fund for this purpose.

Source: Laws 1941, c. 48, § 2, p. 237; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(12), p. 227; R.S.1943, § 23-116; Laws 1969, c. 146, § 1, p. 703; Laws 1991, LB 663, § 33.

23-116.01 Repealed. Laws 1985, LB 393, § 18.

23-116.02 Transferred to section 23-113.03.

23-117 Clerks; assistants of county officer; service in more than one office; when.

The clerks or assistants of any county officer may be required by the county board to serve or assist without additional pay in any other county office than that to which they were appointed, whenever the county board may deem it advisable and expedient for the efficient and economical administration of the affairs of the county.

Source: Laws 1923, c. 37, § 1, p. 151; C.S.1929, § 26-106; R.S.1943, § 23-117; Laws 1947, c. 62, § 1, p. 197; Laws 1967, c. 118, § 1, p. 379.

23-118 Repealed. Laws 1977, LB 363, § 2.

23-119 Property tax; limitation.

It shall be the duty of the county board of each county to cause to be annually levied and collected taxes authorized by law for county purposes. The levy shall be subject to the limit established by section 77-3442.

Source: Laws 1879, § 25, p. 361; Laws 1887, c. 27, § 1, p. 352; Laws 1909, c. 30, § 1, p. 210; R.S.1913, § 954; Laws 1915, c. 18, § 1, p. 75; Laws 1919, c. 66, § 1, p. 174; Laws 1919, c. 67, § 1, p. 178; Laws 1921, c. 144, § 1, p. 614; C.S.1922, § 854; C.S.1929,

§ 26-108; Laws 1935, c. 107, § 7, p. 345; Laws 1939, c. 28, § 8, p. 147; C.S.Supp.,1941, § 26-108; R.S.1943, § 23-119; Laws 1992, LB 719A, § 93; Laws 1996, LB 1114, § 36.

Cross References

Constitutional limitation, see Article VIII, section 5, Constitution of Nebraska.
Election to exceed limit, see sections 23-125 to 23-130.

1. Constitutionality
2. Duties
3. Mandamus to compel performance
4. Fiscal management

1. Constitutionality

LB 1003, Eighty-second Legislature, First Session (sections 23-2601 to 23-2612), does not amend this section and therefor does not violate Article III, section 14, Constitution of Nebraska. Dwyer v. Omaha-Douglas Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972).

Amendatory act of 1889 was constitutional. Bonnell v. County of Nuckolls, 32 Neb. 189, 49 N.W. 225 (1891).

2. Duties

Duty to levy taxes implies power to contract to aid in carrying out duty imposed. Speer v. Kratzenstein, 143 Neb. 310, 12 N.W.2d 360 (1943).

Purchase by commissioners of electric refrigerator for county jail is proper exercise of power. Beadle v. Harmon, 130 Neb. 389, 265 N.W. 18 (1936).

3. Mandamus to compel performance

Mandamus to compel claim included in estimate is not an adjudication of its merits. State ex rel. Marquett Deweese & Hall v. Baushausen, 49 Neb. 558, 68 N.W. 950 (1896).

It is the duty of the county board to provide funds to pay judgment by levying a special tax. Jackson v. Board of Supervisors of Washington County, 34 Neb. 680, 52 N.W. 169 (1892).

Mandamus lies to compel board to include in estimate claims allowed. State ex rel. Wessel v. Weir, 33 Neb. 35, 49 N.W. 785 (1891).

Mandamus lies to include in estimate outstanding allowed claims. State ex rel. Clarke v. Cather, 22 Neb. 792, 36 N.W. 157 (1888).

Mandamus does not lie until board fails to do its duty. State ex rel. Miller v. Sovereign, 17 Neb. 173, 22 N.W. 353 (1885).

Mandamus lies to keep records according to law. State ex rel. Tutton v. Eberhardt, 14 Neb. 201, 15 N.W. 320 (1883).

Mandamus does not lie to compel action on claims where no estimate or levy is made. Board of County Comrs. of Lancaster County v. State ex rel. Miller, 13 Neb. 523, 14 N.W. 517 (1882).

4. Fiscal management

Maximum limit is fixed which a county may levy for county purposes. Chicago, B. & Q. R. R. Co. v. County of Box Butte, 166 Neb. 603, 90 N.W.2d 72 (1958).

''Ensuing year'', as used herein, refers to fiscal or calendar year. State ex rel. Polk County v. Marsh, 106 Neb. 760, 184 N.W. 901 (1921).

''Ensuing year'' refers to the fiscal or calendar year. Central Bridge & Constr. Co. v. Saunders County, 106 Neb. 484, 184 N.W. 220 (1921).

Legislature has forbidden levy in excess of percentage of valuation. Cunningham v. Douglas County, 104 Neb. 405, 177 N.W. 742 (1920).

Warrant is not payable out of general fund of subsequent year, unless included in estimate of latter year, or unless sufficient remains to pay such warrant. State ex rel. Mann v. Clark, 79 Neb. 263, 112 N.W. 857 (1907).

Bridge fund levy is valid though not included in estimate. State ex rel. Newman v. Wise, 12 Neb. 313, 11 N.W. 329 (1882).

Taxes collected do not apply to old claims unless included in estimate. State ex rel. Hitchcock v. Harvey, 12 Neb. 31, 10 N.W. 406 (1881).

23-120 Provide buildings; tax; levy authorized.

(1) The county board shall acquire, purchase, construct, renovate, remodel, furnish, equip, add to, improve, or provide a suitable courthouse, jail, and other county buildings and a site or sites therefor and for such purposes borrow money and issue the bonds of the county to pay for the same. Agreements entered into under section 25-412.03 shall be deemed to be in compliance with this section. The board shall keep such buildings in repair and provide suitable rooms and offices for the accommodation of the several courts of record, Nebraska Workers' Compensation Court or any judge thereof, Commissioner of Labor for the conduct and operation of the state free employment service, county board, county clerk, county treasurer, county sheriff, clerk of the district court, county surveyor, county agricultural agent, and county attorney if the county attorney holds his or her office at the county seat and shall provide suitable furniture and equipment therefor. All such courts which desire such accommodation shall be suitably housed in the courthouse.

(2) No levy exceeding (a) two million dollars in counties having in excess of two hundred fifty thousand inhabitants, (b) one million dollars in counties

having in excess of one hundred thousand inhabitants and not in excess of two hundred fifty thousand inhabitants, (c) three hundred thousand dollars in counties having in excess of thirty thousand inhabitants and not in excess of one hundred thousand inhabitants, or (d) one hundred fifty thousand dollars in all other counties shall be made within a one-year period for any of the purposes specified in subsection (1) of this section without first submitting the proposition to a vote of the people of the county at a general election or a special election ordered by the board for that purpose and obtaining the approval of a majority of the legal voters thereon.

(3)(a) The county board of any county in this state may, when requested so to do by petition signed by at least a majority of the legal voters in the county based on the average vote of the two preceding general elections, make an annual levy of not to exceed seventeen and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in the county for any of the purposes specified in subsection (1) of this section.

(b) If a county on the day it first initiates a project for any of the purposes specified in subsection (1) of this section had no bonded indebtedness payable from its general fund levy, the county board may make an annual levy of not to exceed five and two-tenths cents on each one hundred dollars upon the taxable value of all the taxable property of the county for a project or projects for any of the purposes specified in subsection (1) of this section without the filing of a petition described in subdivision (3)(a) of this section. The county board shall designate the particular project for which such levy shall be expended, the period of years, which shall not exceed ten, for which the tax will be levied for such project, and the number of cents of the levy for each year thereof. The county board may designate more than one project and levy a tax pursuant to this section for each such project, concurrently or consecutively, as the case may be, if the aggregate levy in each year and the duration of each levy will not exceed the limitations specified in this subsection. Each levy for a project which is authorized by this subdivision may be imposed for such duration specified by the county board notwithstanding the contemporaneous existence or subsequent imposition of any other levy or levies for another project or projects imposed pursuant to this subdivision and notwithstanding the subsequent issuance by the county of bonded indebtedness payable from its general fund levy.

Source: Laws 1879, § 25, p. 361; Laws 1887, c. 27, § 1, p. 352; Laws 1889, c. 10, § 1, p. 83; Laws 1909, c. 20, § 1, p. 210; R.S.1913, § 954; Laws 1915, c. 18, § 1, p. 75; Laws 1919, c. 66, § 1, p. 175; Laws 1919, c. 67, § 1, p. 178; Laws 1921, c. 144, § 1, p. 615; C.S.1922, § 854; C.S.1929, § 26-108; Laws 1935, c. 107, § 7, p. 345; Laws 1939, c. 28, § 8, p. 148; C.S.Supp.,1941, § 26-108; R.S.1943, § 23-120; Laws 1951, c. 46, § 1, p. 162; Laws 1953, c. 287, § 38, p. 952; Laws 1967, c. 119, § 1, p. 380; Laws 1969, c. 147, § 1, p. 704; Laws 1971, LB 999, § 1; Laws 1975, LB 97, § 5; Laws 1979, LB 187, § 94; Laws 1984, LB 683, § 1; Laws 1986, LB 811, § 9; Laws 1988, LB 853, § 1; Laws 1992, LB 719A, § 94; Laws 1995, LB 286, § 1; Laws 1996, LB 1114, § 37; Laws 1999, LB 272, § 4.

1. Courthouse
2. Jails
3. Courtrooms
4. Miscellaneous

1. Courthouse

Taxes levied for improvement fund could be used to build courthouse. Satterfield v. Britton, 163 Neb. 161, 78 N.W.2d 817 (1956).

Levy for all purposes, including levy for courthouse, cannot exceed constitutional limits. State ex rel. Shelley v. Board of County Commissioners of Frontier County, 156 Neb. 583, 57 N.W.2d 129 (1953).

Manner of submission of question of voting courthouse bonds was incorporated by reference as a part of county fair act. Richardson v. Kildow, 116 Neb. 648, 218 N.W. 429 (1928).

Special provision for submitting to voters proposition for bonds for county courthouse controls rather than general provisions; majority vote is sufficient. State ex rel. Polk County v. Marsh, 106 Neb. 760, 184 N.W. 901 (1921).

Request is invalidated by unauthorized condition designating courthouse site, where power to select same is vested in county board. Mylet v. Platte County, 103 Neb. 105, 170 N.W. 615 (1919).

2. Jails

It is one of the duties of the county board to provide a jail and keep it in repair. These duties do not devolve upon a sheriff. O'Dell v. Goodsell, 152 Neb. 290, 41 N.W.2d 123 (1950).

County board may lawfully direct a jail fund to be transferred to a special building fund, to be expended in construction of addition to courthouse, including a jail in such addition which will cost an amount equal to or greater than the amount of the jail fund in the treasury. Otoe County v. Kelly, 130 Neb. 869, 266 N.W. 765 (1936).

Board cannot build jail without vote of people authorizing same. State ex rel. Grady v. Lincoln County, 18 Neb. 283, 25 N.W. 91 (1885).

3. Courtrooms

Compensation courtroom provided by county is not the office of the compensation court, and leaving papers with an employee at such courtroom does not constitute a filing thereof. Dolner v. Peter Kiewit & Sons Co., 143 Neb. 384, 9 N.W.2d 483 (1943).

Provisions for housing municipal courts are covered by another statute. State ex rel. City of Omaha v. Board of County Commissioners of Douglas County, 109 Neb. 35, 189 N.W. 639 (1922).

County board is given the power to provide the necessary offices for use of county. Roberts v. Thompson, 82 Neb. 458, 118 N.W. 106 (1908).

4. Miscellaneous

LB 1003, Eighty-second Legislature, First Session (sections 23-2601 to 23-2612), does not amend this section and therefor does not violate Article III, section 14, Constitution of Nebraska. Dwyer v. Omaha-Douglas Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972).

23-121 Office supplies; safes; duty to provide.

The county board shall provide and keep in repair, when the finances of the county will permit, suitable fireproof safes for the county clerk and county treasurer. It shall provide suitable books and stationery for the use of the county board, county clerk, county treasurer, county judge, sheriff, clerk of the district court, county school administrator, county surveyor, and county attorney.

Source: Laws 1879, § 25, p. 361; Laws 1887, c. 27, § 1, p. 353; Laws 1909, c. 30, § 1, p. 211; R.S.1913, § 954; Laws 1915, c. 18, § 1, p. 76; Laws 1919, c. 66, § 1, p. 176; Laws 1919, c. 67, § 1, p. 179; Laws 1921, c. 144, § 1, p. 616; C.S.1922, § 854; C.S.1929, § 26-108; Laws 1935, c. 107, § 7, p. 346; Laws 1939, c. 28, § 8, p. 149; C.S.Supp.,1941, § 26-108; R.S.1943, § 23-121; Laws 1999, LB 272, § 5.

Board is not compelled to let printing contract to lowest bidder. State ex rel. Huse & Son v. Dixon County, 24 Neb. 106, 37 N.W. 936 (1888).

23-122 Counties having less than 150,000 inhabitants; proceedings; claims; employee job titles and salaries; publication; rate.

The county board of all counties having a population of less than one hundred fifty thousand inhabitants shall cause to be published, within ten working days after the close of each annual, regular, or special meeting of the board, a brief statement of the proceedings thereof which shall also include the amount of each claim allowed, the purpose of the claim, and the name of the claimant, except that the aggregate amount of all payroll claims may be included as one item, in one newspaper of general circulation published in the county and also its proceedings upon the equalization of the assessment roll. Between July 15 and August 15 of each year, the employee job titles and the

current annual, monthly, or hourly salaries corresponding to such job titles shall be published. Each job title published shall be descriptive and indicate the duties and functions of the position. No publication in a newspaper shall be required unless the same can be done at an expense not exceeding three-fourths of the legal rate for advertising notices.

Source: Laws 1879, § 25, p. 361; Laws 1887, c. 27, § 1, p. 353; Laws 1909, c. 30, § 1, p. 211; R.S.1913, § 954; Laws 1915, c. 18, § 1, p. 76; Laws 1919, c. 66, § 1, p. 176; Laws 1919, c. 67, § 1, p. 179; Laws 1921, c. 144, § 1, p. 616; C.S.1922, § 854; C.S.1929, § 26-108; Laws 1935, c. 107, § 7, p. 347; Laws 1939, c. 28, § 8, p. 149; C.S.Supp.,1941, § 26-108; R.S.1943, § 23-122; Laws 1947, c. 63, § 1, p. 209; Laws 1953, c. 49, § 1, p. 176; Laws 1959, c. 81, § 1, p. 371; Laws 1974, LB 377, § 1; Laws 1985, LB 547, § 1; Laws 1990, LB 852, § 1; Laws 1996, LB 299, § 16.

Cross References

For legal rate for advertising notices, see section 33-141.

23-123 Repealed. Laws 1979, LB 80, § 116.

23-124 Bridges or buildings; damages; actions to recover.

In all cases where any bridge or any public building, the property of any county within this state, shall be injured or destroyed by any person or persons, either negligently, carelessly or willfully and maliciously, it shall be the duty of the county board, for and in the name of the county, to sue for and recover such damages as shall have occurred by reason thereof, and the money so recovered shall be paid into the treasury of the county, and by the treasurer be credited to the fund out of which such bridge or building was constructed or repaired. The county board shall also examine and approve and perform all duties required to be performed with respect to annual inventory statements prepared by other county officers and filed with the board, with respect to county personal property as provided in sections 23-346 to 23-350.

Source: Laws 1879, § 25, p. 363; Laws 1887, c. 27, § 1, p. 354; Laws 1909, c. 30, § 1, p. 212; R.S.1913, § 954; Laws 1915, c. 18, § 1, p. 77; Laws 1919, c. 66, § 1, p. 177; Laws 1919, c. 67, § 1, p. 180; Laws 1921, c. 144, § 1, p. 617; C.S.1922, § 854; C.S.1929, § 26-108; Laws 1935, c. 107, § 7, p. 347; Laws 1939, c. 28, § 8, p. 150; C.S.Supp.,1941, § 26-108.

23-125 Additional tax; when authorized; limitation.

Whenever the county board deems it necessary to assess taxes the aggregate of which exceeds the rate of fifty cents on every one hundred dollars of the taxable value of all the taxable property in such county, the county board may, by an order entered of record, set forth substantially the amount of such excess required and the purpose for which the same will be required, and if for the payment of interest, principal, or both upon bonds, such order shall in a general way designate the bonds and specify the number of years such excess must be levied and provide for the submission of the question of assessing the additional rate required to a vote of the people of the county at the next election for county officers after the adoption of the resolution or at a special election ordered by the county board for that purpose. If the proposition for such additional tax is carried, the same shall be paid in money and in no other

manner. The additional tax shall not have a duration greater than five years, except that such five-year limitation shall not apply to any additional tax approved by the voters of the county for payment of principal and interest on bonded indebtedness. The additional tax is excluded from the limitation in section 77-3442 as provided by section 77-3444.

Source: Laws 1879, § 26, p. 363; Laws 1887, c. 28, § 2, p. 356; R.S.1913, § 955; C.S.1922, § 855; C.S.1929, § 26-109; R.S.1943, § 23-125; Laws 1951, c. 47, § 1, p. 164; Laws 1953, c. 287, § 39, p. 954; Laws 1992, LB 719A, § 95; Laws 1999, LB 141, § 3; Laws 2005, LB 263, § 1.

Authority to levy tax in excess of constitutional limit is conferred. State ex rel. Shelley v. Board of County Commissioners of Frontier County, 156 Neb. 583, 57 N.W.2d 129 (1953).

Purpose to authorize taxation beyond constitutional limitation must be stated in proposition. Chicago, B. & Q. R. R. Co. v. County of Gosper, 153 Neb. 805, 46 N.W.2d 147 (1951).

Section does apply to procedure for issuance of bonds under county fair act. Richardson v. Kildow, 116 Neb. 648, 218 N.W. 429 (1928).

Board is not authorized to issue refunding bonds under this section. State ex rel. Otoe County v. Babcock, 23 Neb. 802, 37 N.W. 645 (1888).

This section does not apply to bonds issued before 1879. Burlington & M. R. R. Co. v. Saunders County, 17 Neb. 318, 22 N.W. 560 (1885).

23-126 Special tax; submission to voters; notice.

The mode of submitting questions to the people for any purpose authorized by law shall be as follows: The whole question, including the sum desired to be raised, or the amount of tax desired to be levied, or the rate per annum, and the whole regulation, including the time of its taking effect, if it be of a nature to be set forth, and the penalty of its violation, if there be one, is to be published for four weeks in some newspaper published in the county. If there be no such newspaper, the publication is to be made by being posted in at least one of the most public places in each election precinct in the county, and in all cases the notice shall name the time when such question will be voted upon, and the form in which the question shall be taken, and a copy of the question submitted shall be posted at each place of voting during the day of election.

Source: Laws 1879, § 27, p. 363; R.S.1913, § 956; C.S.1922, § 856; C.S.1929, § 26-110.

In absence of controlling special provision, section controls borrowing of money by people of county. Lang v. Sanitary District of Norfolk, 160 Neb. 754, 71 N.W.2d 608 (1955).

Mode of submitting improvement of mail route roads is covered by this section. Chicago, B. & Q. R. R. Co. v. County of Gosper, 153 Neb. 805, 46 N.W.2d 147 (1951).

Requirement that notice be published four weeks and that it contain statement of amount desired to be levied is mandatory. Richardson v. Kildow, 116 Neb. 648, 218 N.W. 429 (1928).

General provision contained in above section as regards procedure for submitting question of issuing bonds does not apply to erection of courthouse. Majority vote is sufficient. State ex rel. Polk County v. Marsh, 106 Neb. 760, 184 N.W. 901 (1921).

Notice of election and time required to be published stated. State ex rel. Harris v. Hanson, 80 Neb. 738, 117 N.W. 412 (1908).

Publication of notice ''during four weeks'' means during full period. State v. Cherry County, 58 Neb. 734, 79 N.W. 825 (1899).

Question of issuing bonds under special act must be submitted to vote. In re House Roll No. 284, 31 Neb. 505, 48 N.W. 275 (1891).

Water and paving bonds of cities may be issued only after vote. State ex rel. City of Fremont v. Babcock, 25 Neb. 500, 41 N.W. 450 (1889).

23-127 Bonds or expenditures; submission to voters; tax proposal mandatory.

When the question submitted involves the borrowing or expenditure of money, or issuance of bonds, the proposition of the question must be accompanied by a provision to levy a tax annually for the payment of interest, if any thereon, and no vote adopting the question proposed shall be valid unless it likewise adopt the amount of tax to be levied to meet the liability incurred.

Source: Laws 1879, § 28, p. 364; R.S.1913, § 957; C.S.1922, § 857; C.S.1929, § 26-111.

Section must be strictly complied with. Richardson v. Kildow, 116 Neb. 648, 218 N.W. 429 (1928); Keith County v. Ogallala Power & Irr. Co., 64 Neb. 35, 89 N.W. 375 (1902).

Section is mandatory. State ex rel. Berry v. Babcock, 21 Neb. 599, 33 N.W. 247 (1887).

23-128 Special tax; submission to voters; election; laws applicable.

At the time specified in such notice a vote of the qualified electors shall be taken in each precinct at the place designated in such notice. The votes shall be received, and returns thereof made, and the same shall be canvassed by the same officers and in the same manner as required at each general election.

Source: Laws 1879, § 29, p. 364; R.S.1913, § 958; C.S.1922, § 858; C.S.1929, § 26-112.

Cross References

For canvass and return of votes, see Chapter 32, article 10.

23-129 Special tax; approval by voters; number required; effect.

If it appears that a majority of the total number of votes cast upon the proposition at the election in which the proposition is submitted are in favor of the proposition, except the proposal for bonds as provided in section 23-3501, which require a majority of votes cast upon the proposition at the election at which the proposition is submitted, and it also appears that the requirements of the law have been fully complied with, the same shall be entered at large by the county board upon the book containing the record of its proceedings, and it shall then have power to levy and collect the special tax in the same manner as other county taxes are collected. Propositions thus acted upon cannot be rescinded by the county board.

Source: Laws 1879, § 30, p. 364; R.S.1913, § 959; C.S.1922, § 859; C.S.1929, § 26-113; R.S.1943, § 23-129; Laws 1949, c. 37, § 1, p. 129; Laws 1953, c. 50, § 1, p. 177; Laws 1961, c. 85, § 1, p. 296; Laws 1971, LB 534, § 25; Laws 1996, LB 1114, § 38.

Favorable vote of two-thirds of electors is required to issue bonds of sanitary drainage district. Lang v. Sanitary District of Norfolk, 160 Neb. 754, 71 N.W.2d 608 (1955).

Where levy in excess of constitutional limit is required, two-thirds vote in favor of bond issue is required. State ex rel. Shelley v. Board of County Commissioners of Frontier County, 156 Neb. 583, 57 N.W.2d 129 (1953).

Approval of levy for improvement of mail route road did not of itself authorize levy above constitutional limit. Chicago, B. & Q. R. R. Co. v. County of Gosper, 153 Neb. 805, 46 N.W.2d 147 (1951).

Provisions are not applicable to erection of courthouse. Majority vote is sufficient. State ex rel. Polk County v. Marsh, 106 Neb. 760, 184 N.W. 901 (1921).

Provisions are not applicable to special acts. State ex rel. Douglas County v. Cornell, 54 Neb. 72, 74 N.W. 432 (1898).

Section is applicable to submission of proposition to sell lands of county. Stenberg v. State ex rel. Keller, 50 Neb. 127, 69 N.W. 849 (1897); Stenberg v. State ex rel. Keller, 48 Neb. 299, 67 N.W. 190 (1896).

This section applies to courthouse bonds. Fenton v. Yule, 27 Neb. 758, 43 N.W. 1140 (1889).

Section means two-thirds of total vote cast. State ex rel. Mann v. Anderson, 26 Neb. 517, 42 N.W. 421 (1889).

Purchaser need look no further than record to determine compliance with requirements of the law. Valley County v. McLean, 79 F. 728 (8th Cir. 1897).

23-130 Special tax; fund.

Money raised by the county board pursuant to the provisions of sections 23-119 to 23-129 is specially appropriated and constituted a fund, distinct from all others, in the hands of the county treasurer, until the obligation assumed be discharged.

Source: Laws 1879, § 31, p. 364; R.S.1913, § 960; C.S.1922, § 860; C.S.1929, § 26-114.

23-131 Warrants; how issued; claims of jurors.

(1) Upon the allowance of any claim or account against the county, the county board shall direct the county clerk to draw a warrant upon the county treasurer in payment thereof. The warrant shall be signed by the chairperson of the county board, except as hereinafter provided, and countersigned by the county clerk. Warrants may also be issued as provided in section 23-1303. All warrants payable to officers or employees of the county and claims or accounts allowed in full shall be delivered by the county clerk upon completion of entries so required in the warrant and distribution records of the officer in charge of such records. If a claim or account is not allowed in full, the warrant shall not be delivered to the party until the time for taking an appeal has expired and, if such appeal be taken, then not until the appeal has been determined.

(2) Jurors in the district courts shall, immediately upon the completion of their services, be entitled to a statement under seal from the clerk of the court wherein their services were rendered, certifying the amount due them for service as jurors in such court. Upon presentation of the certified statement to the county clerk, the county clerk shall immediately issue a warrant upon the county general fund for the amount due as shown by the certified statement. Before delivery of the warrant, the county clerk shall deduct therefrom the amount of any delinquent personal taxes then due from the juror, except that in a county having a county comptroller, the county board shall direct the comptroller to draw the warrant, and the warrant shall be executed as provided in this section, except that it shall be countersigned and issued by the comptroller. If the county clerk or the county comptroller is unable to issue the warrant to the jurors because of insufficient funds, a record of the date of presentation of the certified statements, together with the names and addresses of the jurors, shall be made by the county clerk or the county comptroller and the amount due thereon shall draw interest until there are sufficient funds upon which to draw and pay the warrants, whereupon each juror shall be immediately notified by registered letter, return receipt requested, that upon presentation of a certified statement for juror's fee, a warrant will be drawn therefor with interest, less whatever delinquent personal taxes are then due from him or her.

Source: Laws 1879, § 33, p. 365; Laws 1907, c. 33, § 1, p. 165; Laws 1911, c. 33, § 1, p. 197; R.S.1913, § 961; C.S.1922, § 861; C.S.1929, § 26-115; Laws 1937, c. 58, § 1, p. 234; C.S.Supp.,1941, § 26-115; R.S.1943, § 23-131; Laws 1961, c. 86, § 1, p. 297; Laws 1969, c. 51, § 81, p. 325; Laws 1971, LB 135, § 1; Laws 1973, LB 38, § 1; Laws 1986, LB 889, § 1; Laws 1999, LB 86, § 10.

Where landowner appealed order opening road, warrant for payment of damages could not properly be issued. Barrett v. Hand, 158 Neb. 273, 63 N.W.2d 185 (1954).

Delivery of warrant prior to lapse of time for taking taxpayer's appeal, in violation of statute, does not affect taxpayer's right to appeal. Beadle v. Harmon, 130 Neb. 389, 265 N.W. 18 (1936).

County treasurer cannot pay out public funds in unauthorized manner, take assignment of claim, be reimbursed by county, and thus indirectly liquidate claim against county. Woods v. Brown County, 125 Neb. 256, 249 N.W. 601 (1933).

Amendment of act in 1907 relating to county comptroller sustained as constitutional. Allan v. Kennard, 81 Neb. 289, 116 N.W. 63 (1908).

The allowance by the county board of a claim against the county, even though there is no money in the treasury at the time and no tax levy against which a warrant can be drawn, is irregular, but is not in excess of the power given to examine and settle all claims against the county. State ex rel. McDonald v. Farrington, 80 Neb. 628, 114 N.W. 1100 (1908).

Seal is not always essential if claim is otherwise properly authenticated. Dakota County v. Bartlett, 67 Neb. 62, 93 N.W. 192 (1903).

Account must be allowed before warrant is drawn. Wilson v. State ex rel. Plasters, 53 Neb. 113, 73 N.W. 456 (1897).

Treasurer should not register until after ten days. Means v. Webster, 23 Neb. 432, 36 N.W. 809 (1888).

23-132 Warrants; limitations upon issuance; exceptions.

The county board, after the adoption of the annual county budget statement, may issue warrants against the various funds provided for in such budget

statement within the limitations prescribed in this section. It shall be unlawful for the county board of any county to issue any warrants on any fund or contract any indebtedness against any fund, prior to the annual levy made by the county board, in excess of fifty percent of the fund provided for in the adopted budget statement for the ensuing year unless there is money in the treasury to the credit of the proper fund for the payment of the same. After the tax levy has been made by the county board, it shall be unlawful for the county board of any county to (1) issue any warrants for any amount exceeding eighty-five percent of the aggregate of the amount provided by the budget as finally determined when the levy is made unless there is money in the treasury to the credit of the proper fund for the payment of the same or (2) issue any certificate of indebtedness in any form in payment of any account or claim, make any contracts for or incur any indebtedness in any form in payment of any account or claim, or make any contracts for or incur any indebtedness against the county in excess of the amount provided for and appropriated to any or all of the several funds by the annual county budget statement for the current year except as provided in section 13-511.

Source: Laws 1879, § 34, p. 365; Laws 1881, c. 43, § 1, p. 223; Laws 1883, c. 25, § 1, p. 186; R.S.1913, § 962; C.S.1922, § 862; C.S.1929, § 26-116; Laws 1939, c. 22, § 1, p. 121; C.S.Supp.,1941, § 26-116; R.S.1943, § 23-132; Laws 1969, c. 145, § 27, p. 688; Laws 1992, LB 1063, § 14; Laws 1992, Second Spec. Sess., LB 1, § 14.

1. Contracts
2. Warrants
3. Miscellaneous

1. Contracts

Purpose and intent of this section was not only that a contract in contravention thereof was unenforceable, but also any obligation of any other character should also be unenforceable. Warren v. County of Stanton, 147 Neb. 32, 22 N.W.2d 287 (1946).

County was liable for reasonable value of services of auditor making investigation. Campbell v. Douglas County, 142 Neb. 773, 7 N.W.2d 764 (1943).

A county board by a contract made with an architect in 1921 cannot bind the county to pay commissions to the architect under a levy made in 1931. Berlinghof v. Lincoln County, 128 Neb. 28, 257 N.W. 373 (1934).

County treasurer undertaking to pay unallowed salary claims against county from sinking fund without warrant cannot take assignments of claims and thereafter recover thereon as valid obligation of county unless sinking funds are reimbursed prior thereto. Woods v. Brown County, 125 Neb. 256, 249 N.W. 601 (1933).

Contracts in excess of levy are void. Austin Mfg. Co. v. Colfax County, 67 Neb. 101, 93 N.W. 145 (1903).

After estimate is made, county may anticipate levy and contract indebtedness. Austin Mfg. Co. v. Brown County, 65 Neb. 60, 90 N.W. 929 (1902).

Board does not audit claims unless levy is made or money in treasury. Board of County Comrs. of Lancaster County v. State ex rel. Miller, 13 Neb. 523, 14 N.W. 517 (1882).

2. Warrants

In action against county commissioners to recover money alleged to have been unlawfully expended after the annual tax levy, it must be shown that warrants in excess of the levy for the current year were issued, and that there was no money in the proper fund for their payment. Thiles v. County Board of Sarpy County, 189 Neb. 1, 200 N.W.2d 13 (1972).

Warrants issued in violation of this section are absolutely void. Warren v. Stanton County, 145 Neb. 220, 15 N.W.2d 757 (1944).

County board cannot be compelled by mandamus to issue warrants for an amount exceeding eighty-five percent of the amount levied by tax for the current year except there be money in the proper fund for payment of same. State ex rel. Boxberger v. Burns, 132 Neb. 31, 270 N.W. 656 (1937).

In action against county commissioners to recover money alleged to have been unlawfully expended, it must be shown not only that warrants in excess of eighty-five percent of the amount levied by tax for the current year were issued, but also that there was no money in the proper fund for their payment. Beadle v. Harmon, 130 Neb. 389, 265 N.W. 18 (1936).

Warrants are not payable out of levy for subsequent years unless included in estimate, or until after all indebtedness for subsequent year is paid. Roberts v. Thompson, 82 Neb. 458, 118 N.W. 106 (1908).

Warrant issued in excess of statutory limitation is void. National Life Ins. Co. v. Dawes County, 67 Neb. 40, 93 N.W. 187 (1903).

Action on warrant does not accrue until there is money on hand in the fund on which the warrant is drawn, sufficient to pay same, or the authorities have had opportunity to provide for payment and have neglected to do so. Bacon v. Dawes County, 66 Neb. 191, 92 N.W. 313 (1902).

Warrant issued for a purpose not within jurisdiction of board is void. Walsh v. Rogers, 15 Neb. 309, 18 N.W. 135 (1884).

Warrants drawn and unpaid cannot be included in levy in excess of maximum. State ex rel. First Nat. Bank of Beatrice v. Gosper County, 14 Neb. 22, 14 N.W. 801 (1883).

Action held not barred by statute of limitations. State ex rel. Hitchcock v. Harvey, 12 Neb. 31, 10 N.W. 406 (1881); Brewer v. Otoe County, 1 Neb. 373 (1871).

Where warrant is void, there may be recovery of purchase price. Rogers v. Walsh, 12 Neb. 28, 10 N.W. 467 (1881).

Precinct indebtedness may be paid by warrants issued by county. State ex rel. Osborne v. Thorne, 9 Neb. 458, 4 N.W. 63 (1880).

Chairman is not required to sign warrant where there are no funds or levy. Patterson v. State ex rel. Dusenbery, 2 Neb. Unof. 765, 89 N.W. 989 (1902).

3. Miscellaneous

Party prosecuting claim against county is not required to plead and prove that there are sufficient funds in the treasury or taxes levied to authorize board to allow claim, as this is a matter of defense. Sheldon v. Gage County Soc. of Ag., 75 Neb. 485, 106 N.W. 474 (1906).

''Incurring indebtedness'' defined. State ex rel. Wessel v. Weir, 33 Neb. 35, 49 N.W. 785 (1891).

23-133 Warrants; specify fund upon which drawn.

Each warrant issued shall specify the fund upon which it is drawn.

Source: Laws 1879, § 35, p. 365; R.S.1913, § 963; C.S.1922, § 863; C.S.1929, § 26-117; Laws 1939, c. 23, § 1, p. 123; C.S.Supp.,1941, § 26-117; R.S.1943, § 23-133; Laws 1963, c. 110, § 1, p. 438.

County treasurer is without authority to liquidate claims against county. Woods v. Brown County, 125 Neb. 256, 249 N.W. 601 (1933).

Purpose is to guard against overdrawing. National Life Ins. Co. v. Dawes County, 67 Neb. 40, 93 N.W. 187 (1903).

Officers are liable for warrant in excess of limit. Bacon v. Dawes County, 66 Neb. 191, 92 N.W. 313 (1902).

Warrant must show on face amount levied. Patterson v. State ex rel. Dusenbery, 2 Neb. Unof. 765, 89 N.W. 989 (1902).

23-134 Warrants; issuance in excess of limitations; liability of county board.

Any warrant drawn after eighty-five percent of the amount levied for the year is exhausted, and where there are no funds in the treasury for the payment of the same, shall not be chargeable as against the county, but may be collected by civil action from the county board making the same, or any member thereof.

Source: Laws 1879, § 36, p. 365; Laws 1881, c. 43, § 2, p. 223; R.S.1913, § 964; C.S.1922, § 864; C.S.1929, § 26-118.

In action against county commissioners to recover money alleged to have been unlawfully expended after the annual tax levy, it must be shown that warrants in excess of the levy for the current year were issued, and that there was no money in the proper fund for their payment. Thiles v. County Board of Sarpy County, 189 Neb. 1, 200 N.W.2d 13 (1972).

No recovery quantum meruit can be had where there is a constitutional or statutory disqualification to make the contract or create the liability. Warren v. County of Stanton, 147 Neb. 32, 22 N.W.2d 287 (1946).

Where warrants on their face disclosed that amount issued exceeded levy authorized, recovery could not be had quantum meruit for the excess. Warren v. County of Stanton, 147 Neb. 32, 22 N.W.2d 287 (1946).

No action can be maintained against county upon warrants issued in violation of this section. Warren v. Stanton County, 145 Neb. 220, 15 N.W.2d 757 (1944).

Where warrants on their face show that amount of levy has been exceeded, county cannot be estopped to deny liability thereon. Warren v. Stanton County, 145 Neb. 220, 15 N.W.2d 757 (1944).

In action against county commissioners to recover money alleged to have been unlawfully expended, it must be shown not only that warrants in excess of eighty-five percent of the amount levied by tax for the current year were issued, but also that there was no money in the proper fund for their payment. Beadle v. Harmon, 130 Neb. 389, 265 N.W. 18 (1936).

23-135 Claims; time of filing; approval of certain purchases; procedure; payment in advance of services; authorized; disallowance of claim; notice; appeal.

(1) All claims against a county shall be filed with the county clerk within ninety days from the time when any materials or labor, which form the basis of the claims, have been furnished or performed, except that (a) the fees of jurors serving in the district courts shall be paid as provided for in section 23-131, (b) payment may be approved as provided in subsection (2) of this section, and (c) payments may be made as provided in subsection (3) of this section. The county board may authorize procedures whereby claims may be filed electronically. The electronic filing shall include the following: Information with respect to the person filing the claim, the basis of the claim, the amount of the claim, the date

of the claim, and any other information the county board may require. The county clerk shall keep records of each electronic claim. The records shall be accessible for public viewing in either electronic or printed format.

(2) A county board may by resolution, which resolution constitutes a claim pursuant to subsection (1) of section 23-1303, approve the payment for a particular piece of personal property prior to the receipt of such property by the county. A county board may by resolution approve the payment for a particular piece of real or personal property at the auction at which such property is sold if the resolution states the maximum amount which the county may bid for the particular piece of real or personal property.

(3) The county board may pay in advance of services being rendered if it is pursuant to a contract entered into with the state. Such contract shall meet the requirements of the Interlocal Cooperation Act.

(4) When the claim of any person against the county is disallowed in whole or in part by the county board, such person may appeal from the decision of the board to the district court of such county by causing a written notice to be served on the county clerk within twenty days after making such decision and executing a bond to such county, with sufficient security, to be approved by the county clerk, conditioned for the faithful prosecution of such appeal and the payment of all costs that shall be adjudged against the appellant. Upon the disallowance of any claim, the county clerk shall notify the claimant, his or her agent, or his or her attorney in writing of the fact within five days after such disallowance. Notice mailed within such time shall be deemed sufficient. In a county with a county comptroller, all claims shall be filed with the comptroller and not with the county clerk. The comptroller shall keep records of each electronic claim. The records shall be accessible for public viewing in either electronic or printed format. When an appeal is taken, it shall be the duty of the county clerk to immediately notify the county comptroller of such appeal.

Source: Laws 1879, § 37, p. 366; Laws 1885, c. 37, § 1, p. 211; Laws 1907, c. 33, § 1, p. 165; Laws 1911, c. 33, § 1, p. 198; R.S.1913, § 965; C.S.1922, § 865; C.S.1929, § 26-119; Laws 1935, c. 50, § 1, p. 176; C.S.Supp.,1941, § 26-119; R.S.1943, § 23-135; Laws 1957, c. 59, § 1, p. 276; Laws 1988, LB 828, § 1; Laws 1999, LB 86, § 11; Laws 2003, LB 331, § 1.

Cross References

For tort claims against county, see the Political Subdivisions Tort Claims Act, section 13-901 et seq.
Interlocal Cooperation Act, see section 13-801.

1. What are claims
2. Filing
3. Auditing
4. Allowance
5. Appeal
6. Miscellaneous

1. What are claims

Under the provisions of this section, the Legislature has expressly waived the counties' sovereign immunity with respect to contractual disputes. This section does not apply where the county is not required to make a determination of facts based upon the evidence. Hoiengs v. County of Adams, 245 Neb. 877, 516 N.W.2d 223 (1994).

Any action at law against a county for payment for services or labor which arises out of a contractual relationship is subject to the county claims statute, and any petition stating such a claim but failing to allege compliance with the statutory requirements of this section is demurrable. Jackson v. County of Douglas, 223 Neb. 65, 388 N.W.2d 64 (1986).

This section applies to all claims arising from or out of a contract, and a petition which is subject to its provisions is demurrable unless it shows on its face that the claim was filed with the county clerk within the statutory time. Zeller Sand & Gravel v. Butler Co., 222 Neb. 847, 388 N.W.2d 62 (1986).

Reimbursement of taxes paid for void tax sale certificate is a claim. Farm Investment Co. v. Scotts Bluff County, 125 Neb. 582, 251 N.W. 115 (1933).

Section refers only to claim originating in contract. Douglas County v. Taylor, 50 Neb. 535, 70 N.W. 27 (1897).

Section does not apply to demands arising upon torts. Hollingsworth v. Saunders County, 36 Neb. 141, 54 N.W. 79 (1893).

Costs of redeeming land, wrongfully sold for taxes, is proper claim. Fuller v. Colfax County, 33 Neb. 716, 50 N.W. 1044 (1892).

Taxes paid under protest may form basis of claim. Richardson County v. Hull, 28 Neb. 810, 45 N.W. 53 (1890).

Expense of redeeming land from wrongful sale for taxes is a claim against the county. Richardson County v. Hull, 24 Neb. 536, 39 N.W. 608 (1888).

2. Filing

The purpose of the filing requirement of this section is to provide the county with full information of the rights asserted against it and enable it to make proper investigation concerning the merits of claims against it and to settle those of merit without the expense of litigation. Olson v. County of Lancaster, 230 Neb. 904, 434 N.W.2d 307 (1989).

Requirement that claims shall be filed within ninety days applies only to claims ex contractu. McCollough v. County of Douglas, 150 Neb. 389, 34 N.W.2d 654 (1948).

Requirement for filing within ninety days includes all claims arising ex contractu whether express or implied. Coverdale & Colpitts v. Dakota County, 144 Neb. 166, 12 N.W.2d 764 (1944).

Provisions as to filing claim and time within which filing must be made are both mandatory. Verges v. County of Morrill, 143 Neb. 173, 9 N.W.2d 221 (1943).

Amendment of 1935 requiring claims for materials or labor to be filed within ninety days is constitutional. Consolidated Chemical Laboratories v. County of Cass, 141 Neb. 486, 3 N.W.2d 920 (1942).

Claims must be filed with county clerk, who is also clerk of board of supervisors. Formal pleadings are not necessary in presenting claims. Gibson v. Sherman County, 97 Neb. 79, 149 N.W. 107 (1914).

Action upon a claim for a tort or unliquidated damages may be commenced by filing a claim with the county board. Wherry v. Pawnee County, 88 Neb. 503, 129 N.W. 1013 (1911).

Claim is filed when delivered to clerk. State ex rel. Thomas Clock Co. v. Board of County Comrs. of Cass County, 60 Neb. 566, 83 N.W. 733 (1900).

Claim agreed upon by two counties need not be presented to board before suit. Perkins County v. Keith County, 58 Neb. 323, 78 N.W. 630 (1899).

Claim for an account against a county cannot be sued upon but must be filed. State ex rel. Clark v. Board of County Comrs. of Buffalo County, 6 Neb. 454 (1877).

All claims arising ex contractu against a county must be filed with the county clerk within 90 days. Shaul v. Brenner, 10 Neb. App. 732, 637 N.W.2d 362 (2001).

3. Auditing

This section regulates the exercise of the power granted to examine and settle all accounts against the county. State ex rel. McDonald v. Farrington, 80 Neb. 628, 114 N.W. 1100 (1908).

County board cannot audit claim previous to rendition of service. Wilson v. State ex rel. Plasters, 53 Neb. 113, 73 N.W. 456 (1897).

Board alone has power to audit claims. Gage County v. Hill, 52 Neb. 444, 72 N.W. 581 (1897); Cuming County v. Thiele, 48 Neb. 888, 67 N.W. 883 (1896); State ex rel. Franklin County v. Vincent, 46 Neb. 408, 65 N.W. 50 (1895); Heald v. Polk County, 46 Neb. 28, 64 N.W. 376 (1895); Sioux County v. Jameson, 43 Neb. 265, 61 N.W. 596 (1895).

Board cannot audit claim until warrant can be legally drawn therefor. Lancaster County v. State ex rel. Miller, 13 Neb. 523, 14 N.W. 517 (1882).

Board cannot be compelled by mandamus to audit an account, but may be compelled to act upon it in proper case. State ex rel. Hagberg v. Furnas County, 10 Neb. 361, 6 N.W. 434 (1880).

4. Allowance

County board has exclusive original jurisdiction of claim for attorney's fees for collection of taxes. Strawn v. County of Sarpy, 154 Neb. 844, 49 N.W.2d 677 (1951).

County board has exclusive original jurisdiction to examine and allow a claim against the county arising out of contract. County of Sarpy v. Gasper, 149 Neb. 51, 30 N.W.2d 67 (1947).

Failure to verify claim does not deprive county commissioners of jurisdiction to act on claims against county. Beadle v. Harmon, 130 Neb. 389, 265 N.W. 18 (1936).

Equitable relief may be granted where no notice is given claimants that claim for damages, arising out of location of road, is disallowed. Horner v. Eells, 114 Neb. 210, 206 N.W. 733 (1925).

County commissioners may pass on claim though same is not in statutory form. Bartlett v. Dahlsten, 104 Neb. 738, 178 N.W. 636 (1920).

Board acts ministerially where amount is fixed by law. Otoe County v. Stroble, 71 Neb. 415, 98 N.W. 1065 (1904); Crouch v. Pyle, 70 Neb. 60, 96 N.W. 1049 (1903); Mitchell v. Clay County, 69 Neb. 779, 96 N.W. 673 (1903).

Settlement with county officers is conclusive, except for fraud, mistake, or imposition. Wilcox v. Perkins County, 70 Neb. 139, 97 N.W. 236 (1903).

Board acts ministerially when adjusting accounts of county officer, but judicially when allowing claims. Chase County v. Kelly, 69 Neb. 426, 95 N.W. 865 (1903); Trites v. Hitchcock County, 53 Neb. 79, 73 N.W. 215 (1897).

Allowance of claim against ''advertising fund'' constitutes allowance against general fund. Dakota County v. Bartlett, 67 Neb. 62, 93 N.W. 192 (1903).

Board acts ministerially upon claim of officer for salary. Gallaher v. City of Lincoln, 63 Neb. 339, 88 N.W. 505 (1901).

Board acts judicially only on claims they have right to pass upon. Hayes County v. Christner, 61 Neb. 272, 85 N.W. 73 (1901).

Board has exclusive original jurisdiction. In absence of fraud, payment cannot be enjoined. Board of Comrs. of Dixon County v. Barnes, 13 Neb. 294, 13 N.W. 623 (1882); Brown v. Otoe County, 6 Neb. 111 (1877).

No formal judgment need be entered in passing on claims. Black v. Saunders County, 8 Neb. 440, 1 N.W. 144 (1879).

5. Appeal

In order to perfect an appeal to the district court from a county board of equalization, all activities necessary, including the filing of notice of appeal, must be carried out within forty-five days of the adjournment of the board. Knoefler Honey Farms v. County of Sherman, 193 Neb. 95, 225 N.W.2d 855 (1975).

Method of giving notice of appeal in this particular case from freeholders' board, in a county where by law county clerk is ex officio clerk of the district court, held sufficient. Elson v. Harbert, 190 Neb. 437, 208 N.W.2d 703 (1973).

Manner of taking appeal under this section was made applicable to appeals from action of freeholders' board involving school districts. Reiber v. Harris, 179 Neb. 582, 139 N.W.2d 353 (1966).

This section governs manner of appeal from action of county superintendents in reorganization of school districts. Roy v. Bladen School Dist. No. R-31, 165 Neb. 170, 84 N.W.2d 119 (1957).

Before an appeal can be taken, claim must be disallowed, in whole or in part, by the county board. Verges v. County of Morrill, 143 Neb. 173, 9 N.W.2d 221 (1943).

Failure to verify petition on appeal is not a jurisdictional defect. Myers v. Hall County, 130 Neb. 13, 263 N.W. 486 (1935).

Form of notice of appeal is not prescribed by statute, and written notice which causes clerk to make up full transcript is sufficient. State v. Odd Fellows Hall Assn., 123 Neb. 440, 243 N.W. 616 (1932).

Claimant, party having direct interest, must serve notice within twenty days after the board's decision. Sommerville v. Board of Commissioners of Douglas County, 117 Neb. 507, 221 N.W. 433 (1928).

Appeal from board of county supervisors' order, allowing claim against county, brings action to district court for trial de novo. Campbell Co. v. Boyd County, 117 Neb. 186, 220 N.W. 240 (1928); Box Butte County v. Noleman, 54 Neb. 239, 74 N.W. 582 (1898).

Words ''recovery by suit'' include suits instituted by appeal from action of board on claim. Cass County v. Sarpy County, 83 Neb. 435, 119 N.W. 685 (1909).

Where funds can be distributed only upon warrants authorized by board, a claim therefor may be filed and an appeal taken. School Dist. No. 30 of Cuming County v. Cuming County, 81 Neb. 606, 116 N.W. 522 (1908).

Claimant is allowed twenty days from the order of disallowance in which to appeal. Lincoln Township v. Kearney County, 79 Neb. 299, 112 N.W. 608 (1907).

District court should not try appeal until issues are joined by pleadings. Loup County v. Wirsig, 73 Neb. 505, 103 N.W. 56 (1905); Haskell v. Valley County, 41 Neb. 234, 59 N.W. 680 (1894).

Appeal bonds. Requisites and validity. Hitchcock County v. Brown, 73 Neb. 254, 102 N.W. 456 (1905); Holmes v. State, 17 Neb. 73, 22 N.W. 232 (1885); Gage County v. Fulton, 16 Neb. 5, 19 N.W. 781 (1884); Stewart v. Carter, 4 Neb. 564 (1876).

Appeal vacates the decision of board and applies to whole claim. Dakota County v. Borowsky, 67 Neb. 317, 93 N.W. 686 (1903).

Service of notice of appeal is made when delivered to clerk. Jarvis v. Chase County, 64 Neb. 74, 89 N.W. 624 (1902).

Jurisdiction of district court is not original. Shepard v. Easterling, 61 Neb. 882, 86 N.W. 941 (1901).

On appeal to district court, the issues need not be the same as before the board. Sheibley v. Dixon County, 61 Neb. 409, 85 N.W. 399 (1901).

Appeal brings action to district court for trial de novo. Box Butte County v. Noleman, 54 Neb. 239, 74 N.W. 582 (1898).

Appeal to Supreme Court; issues to be decided. State ex rel. Thomas Clock Co. v. Board of County Comrs. of Cass County, 53 Neb. 767, 74 N.W. 254 (1898).

Appeal lies on claim for taxes paid under protest. Chicago, B. & Q. R. R. Co. v. Nemaha County, 50 Neb. 393, 69 N.W. 958 (1897).

Dismissal of appeal is final adjudication. State ex rel. Marquett, Deweese & Hall v. Baushausen, 49 Neb. 558, 68 N.W. 950 (1896).

Taxpayer may appeal. Board of Comrs. of Dixon County v. Barnes, 13 Neb. 294, 13 N.W. 623 (1882).

Appeal is dismissed unless bond is properly approved. Cedar County v. McKinney L. & Inv. Co., 1 Neb. Unof. 411, 95 N.W. 605 (1901).

6. Miscellaneous

Where the salary or compensation of a public officer is fixed by statute, no judicial action in that respect is required, and therefore this section is inapplicable. Heinzman v. County of Hall, 213 Neb. 268, 328 N.W.2d 764 (1983).

Where state and local purposes are commingled, the crucial issue turns upon a determination of whether the controlling purposes are state or local. Counties may be required to pay attorney's fees for one appointed to defend an indigent defendant. Kovarik v. County of Banner, 192 Neb. 816, 224 N.W.2d 761 (1975).

Claim by defendant county that this statute of limitation applied in this case was not decided because not raised by cross-appeal as required by rules of the Supreme Court. Hays v. County of Douglas, 192 Neb. 580, 223 N.W.2d 143 (1974).

Cited but not discussed. Clark v. Sweet, 183 Neb. 723, 163 N.W.2d 881 (1969).

Claim for attorney's fees in tax foreclosure was barred. Strawn v. County of Sarpy, 156 Neb. 797, 58 N.W.2d 168 (1953).

County treasurer is without authority to liquidate claims against county. Woods v. Brown County, 125 Neb. 256, 249 N.W. 601 (1933).

Under former law, this section governed the verification of claims against the county. Uttley v. Sievers, 100 Neb. 59, 158 N.W. 373 (1916).

Claim is not barred until four years from act authorizing county to pay same. Gibson v. Sherman County, 97 Neb. 79, 149 N.W. 107 (1914).

County attorney has authority to bind county for expenses of suit. Christner v. Hayes County, 79 Neb. 157, 112 N.W. 347 (1907).

Members of board are liable for warrant drawn without legal authority. Otoe County v. Stroble, 71 Neb. 415, 98 N.W. 1065 (1904).

23-135.01 Claims; false statements or representations; penalties.

Whoever shall file any claim against any county as provided in section 23-135, knowing said claim to contain any false statement or representation as to a material fact or whoever shall obtain or receive any money or any warrant for money from any county knowing that the claim therefor was based on a false statement or representation as to a material fact, if the amount claimed or money obtained or received, or if the face value of the warrant for money shall be one thousand dollars or more shall be guilty of a Class IV felony. If the amount is more than one hundred dollars but less than one thousand dollars, the person so offending shall be guilty of a Class II misdemeanor. If the amount is less than one hundred dollars, the person so offending shall be guilty of a Class III misdemeanor.

Source: Laws 1957, c. 59, § 2, p. 277; Laws 1977, LB 40, § 84.

Mere negligence on part of claimant is not enough to sustain a conviction hereunder. State ex rel. Nebraska State Bar Assn. v. Holscher, 193 Neb. 729, 230 N.W.2d 75 (1975).

23-136 Claims; allowance; appeal by taxpayer; procedure.

Any taxpayer may likewise appeal from the allowance of any claim against the county by serving a like notice within ten days and giving a bond similar to that provided for in section 23-135.

Source: Laws 1879, § 38, p. 366; Laws 1885, c. 37, § 1, p. 212; R.S.1913, § 966; C.S.1922, § 866; C.S.1929, § 26-120.

1. Right to appeal
2. Procedure
3. Effect on warrants
4. Miscellaneous

1. Right to appeal

This ten-day time is applicable to an appeal from the action of the county board of equalization in setting the nonresident high school tuition levy. In re 1981-82 County Tax Levy of Saunders County Bd. of Equal., 214 Neb. 624, 335 N.W.2d 299 (1983).

Taxpayers may appeal from order allowing claim against county, though board's action may be result of compromise of disputed claim. Campbell Co. v. Boyd County, 117 Neb. 186, 220 N.W. 240 (1928).

Taxpayer may appeal from allowance to agricultural society. Sheldon v. Gage County Soc. of Agri., 71 Neb. 411, 98 N.W. 1045 (1904).

2. Procedure

Taxpayer may appeal from allowance of claim by serving notice and giving bond. Reiber v. Harris, 179 Neb. 582, 139 N.W.2d 353 (1966).

Notice of appeal is jurisdictional and taxpayer must serve notice within ten days after board's decision. Sommerville v. Board of County Commissioners of Douglas County, 116 Neb. 282, 216 N.W. 815 (1927).

Judgment is an entirety; appeal puts all in issue. Dakota County v. Borowsky, 67 Neb. 317, 93 N.W. 686 (1903).

Right to appeal does not arise until claim has been allowed. Shepard v. Easterling, 61 Neb. 882, 86 N.W. 941 (1901).

Appeal may be dismissed if made in bad faith. Gage County v. King Bridge Co., 58 Neb. 827, 80 N.W. 56 (1899).

Remedy of appeal is exclusive. Taylor v. Davey, 55 Neb. 153, 75 N.W. 553 (1898).

Bona fide attempt to appeal will not be dismissed on account of informalities or omissions in bond. Rube v. Cedar County, 35 Neb. 896, 53 N.W. 1009 (1892); State ex rel. Hagberg v. County Comrs. of Furnas County, 10 Neb. 361, 6 N.W. 434 (1880).

3. Effect on warrants

Delivery of the warrant in suit prior to lapse of time for taking taxpayer's appeal, in violation of statute, does not affect taxpayer's right of appeal. Beadle v. Harmon, 130 Neb. 389, 265 N.W. 18 (1936).

Warrants should not be delivered or registered until time for appeal has expired. Means v. Webster, 23 Neb. 432, 36 N.W. 809 (1888).

4. Miscellaneous

Cited but not discussed. Clark v. Sweet, 183 Neb. 723, 163 N.W.2d 881 (1969).

Taxpayer, in absence of statutory authority, cannot collect attorney fees from county. Minshull v. Sherman County, 95 Neb. 835, 146 N.W. 1009 (1914).

23-137 Claims; appeal; record; trial; costs.

The clerk of the board, upon such appeal being taken and being paid the proper fees therefor, shall make out a complete transcript of the proceedings of the board relating to the matter of its decision and shall deliver it to the clerk of the district court. The appeal shall be entered, tried, and determined and costs awarded in the manner provided in sections 25-1901 to 25-1937.

Source: Laws 1879, § 39, p. 366; R.S.1913, § 967; C.S.1922, § 867; C.S.1929, § 26-121; R.S.1943, § 23-137; Laws 1991, LB 1, § 2.

In order to perfect an appeal to the district court from a county board of equalization, all activities necessary, including the filing of notice of appeal, must be carried out within forty-five days of the adjournment of the board. Knoefler Honey Farms v. County of Sherman, 193 Neb. 95, 225 N.W.2d 855 (1975).

Cited but not discussed. Clark v. Sweet, 183 Neb. 723, 163 N.W.2d 881 (1969).

Procedure for appeal to the district court from action of a county board of equalization is that prescribed for appeal from justice of peace court to the district court. Nebraska Conf. Assn. Seventh Day Adventists v. County of Hall, 166 Neb. 588, 90 N.W.2d 50 (1958).

Delivery of the warrant in suit prior to lapse of time for taking taxpayer's appeal, in violation of statute, does not affect taxpayer's right of appeal. Beadle v. Harmon, 130 Neb. 389, 265 N.W. 18 (1936).

District court acquires jurisdiction by appeal from county board's disallowance of claim where claimant gives notice of appeal, furnishes appeal bond and files transcript in office of clerk of district court within time, though the petition on appeal is not filed until a later date. Myers v. Hall County, 130 Neb. 13, 263 N.W. 486 (1935).

An appeal from an order of the county board allowing a claim brings the action to the district court for trial de novo. Campbell Co. v. Boyd County, 117 Neb. 186, 220 N.W. 240 (1928).

Duty to prepare properly and file transcript is primarily enjoined upon county clerk and not upon claimant. Bartlett v. Dahlsten, 104 Neb. 738, 178 N.W. 636 (1920).

District court should not try appeal until issues are joined by pleadings. Loup County v. Wirsig, 73 Neb. 505, 103 N.W. 56 (1905); Haskell v. Valley County, 41 Neb. 234, 59 N.W. 680 (1894).

23-138 Claims; reconsideration.

The provisions of sections 23-135 to 23-137 shall not be so construed as to prevent the county board from once reconsidering their action on any claim, upon due notice to parties interested.

Source: Laws 1879, § 40, p. 366; R.S.1913, § 968; C.S.1922, § 868; C.S.1929, § 26-122.

A county board may reconsider once its action on the allowance of a claim, upon due notice to interested parties. State ex rel. Allen v. Miller, 138 Neb. 747, 295 N.W. 279 (1940).

Order of board establishing a ditch is not a judicial act and may be reconsidered where no rights have accrued thereunder. State ex rel. Sullivan v. Ross, 82 Neb. 414, 118 N.W. 85 (1908).

Order of disallowance, reconsidered, is not an adjudication of claim. Dean v. Saunders County, 55 Neb. 759, 76 N.W. 450 (1898).

Board may reconsider claim once on notice. Appearance of attorney is a waiver of notice. State ex rel. Marquett, Deweese & Hall v. Baushausen, 49 Neb. 558, 68 N.W. 950 (1896).

Board cannot review or reverse the act of a prior board. Stenberg v. State ex rel. Keller, 48 Neb. 299, 67 N.W. 190 (1896).

23-139 Special tax fund; reversion to general fund.

Whenever a tax is levied for the payment of a specific debt, the amount of such tax collected shall be kept as a separate fund in the county treasury, and expended only in the liquidation of such indebtedness; *Provided*, any surplus remaining in the treasury after full payment of such indebtedness shall be transferred to the general fund of the county.

Source: Laws 1879, § 41, p. 367; R.S.1913, § 969; C.S.1922, § 869; C.S.1929, § 26-123.

Beneficial owners of taxes enforced by trustee for governmental subdivisions in tax foreclosure suit are entitled to a strict accounting of the avails of the tax foreclosure on the basis of the integrity of separate tax funds involved. Darnell v. City of Broken Bow, 139 Neb. 844, 299 N.W. 274 (1941).

23-140 Debts due county; settlement.

All persons chargeable with money belonging to any county shall render their accounts to and settle with the county board at the time required by law, and pay into the county treasury any balance which may be due the county, take duplicate receipts therefor, and deposit one of the same with the clerk of the county within five days thereafter.

Source: Laws 1879, § 43, p. 367; R.S.1913, § 970; C.S.1922, § 870; C.S.1929, § 26-124.

A county clerk, chargeable with money belonging to the county by collection of fees, is required to render accounts and settle with county board as provided in this section. Hoctor v. State, 141 Neb. 329, 3 N.W.2d 558 (1942).

If the board allows greater compensation than that fixed by law, action is void. Maurer v. Gage County, 72 Neb. 441, 100 N.W. 1026 (1904).

Board acts ministerially in adjusting accounts of county officers. Smith v. Clay County, 71 Neb. 614, 99 N.W. 501 (1904); Mitchell v. Clay County, 69 Neb. 779, 96 N.W. 673 (1903), reversed on rehearing 69 Neb. 795, 98 N.W. 662 (1904).

Action of board allowing officer to retain fees illegally does not make members liable unless they acted corruptly, and such action does not protect officer. Otoe County v. Dorman, 71 Neb. 408, 98 N.W. 1064 (1904).

Mandamus is not proper action to litigate right to retain fees. Maurer v. State ex rel. Gage County, 71 Neb. 24, 98 N.W. 426 (1904).

23-141 Debts due county; action to recover.

If any person thus chargeable shall neglect or refuse to render true accounts or settle as aforesaid, the county board shall adjust the accounts of such delinquent, according to the best information they can obtain, and ascertain the

balance due the county, and may institute the proper action to recover such balance so found due.

Source: Laws 1879, § 44, p. 367; R.S.1913, § 971; C.S.1922, § 871; C.S.1929, § 26-125.

In making adjustment of accounts with county officers, county board acts ministerially, and county may recover from the officer any excess paid. Maurer v. Gage County, 72 Neb. 441, 100 N.W. 1026 (1904).

23-142 Debts due county; failure to pay; penalty; collection.

In such case, the delinquent shall not be entitled to any commission, and shall forfeit and pay to the county a penalty of twenty percent on the amount found due the county. Such penalty shall be added to the amount so found due, and it shall be the duty of the court in which any action is brought to recover the same, to include such penalty in any judgment which may be rendered against the delinquent in such action. Such penalty, when collected, shall be paid into the county treasury for the benefit of the school fund.

Source: Laws 1879, § 45, p. 367; R.S.1913, § 972; C.S.1922, § 872; C.S.1929, § 26-126.

Board acts ministerially in adjusting officer's fees. Such adjustment is no bar to suit to recover fees unlawfully held. Maurer v. Gage County, 72 Neb. 441, 100 N.W. 1026 (1904); Sheibley v. Dixon County, 61 Neb. 409, 85 N.W. 399 (1901).

Finding by board is not conclusive. Heald v. Polk County, 46 Neb. 28, 64 N.W. 376 (1895).

23-143 Claims; delinquent personal taxes; deduction.

The county board of any county, whenever the account or claim of any person, firm or corporation against the county is presented to them for allowance, shall procure from the county treasurer a certificate of the amount of delinquent personal taxes assessed against the person, firm or corporation in whose favor the account or claim is presented, and shall deduct from any amount found due upon such account or claim the amount of such tax, and shall forthwith issue a warrant for the balance remaining, if any.

Source: Laws 1879, § 48, p. 368; R.S.1913, § 973; C.S.1922, § 873; C.S.1929, § 26-127; Laws 1933, c. 126, § 1, p. 501; C.S.Supp.,1941, § 26-127.

County board must deduct from claim delinquent personal property taxes. State ex rel. Bates v. Morgan, 154 Neb. 234, 47 N.W.2d 512 (1951).

Duty to deduct personal taxes rests upon county board, and cannot be delegated to another. State ex rel. Leidigh v. Johnson, 92 Neb. 736, 139 N.W. 669 (1913).

Board may deduct delinquent taxes from judgment on a claim. State ex rel. Hershiser v. Holt County, 89 Neb. 445, 131 N.W. 960 (1911).

23-144 Claims; delinquent personal taxes; deduction; treasurer's receipt.

For any such delinquent personal taxes so set off and deducted from any such account or claim, the board shall issue an order to the county treasurer directing him to draw from the same fund out of which said account or claim should have been paid the amount of said delinquent taxes so set off or deducted, and apply the same upon said delinquent personal taxes in satisfaction thereof; and the said treasurer shall, upon application, receipt therefor to the person whose taxes are so satisfied.

Source: Laws 1879, § 49, p. 368; R.S.1913, § 974; C.S.1922, § 874; C.S.1929, § 26-128.

Amount deducted from claim should be applied on delinquent taxes. State ex rel. Bates v. Morgan, 154 Neb. 234, 47 N.W.2d 512 (1951).

Board acts judicially and mandamus will not lie to compel them to make particular decision. State ex rel. Ensey v. Churchill, 37 Neb. 702, 56 N.W. 484 (1893).

23-145 Actions against county; delinquent personal tax; offset.

In any suit against a county, any delinquent personal taxes assessed against the person in whose favor the cause of action accrued, may be set off against any amount claimed in such action.

Source: Laws 1879, § 50, p. 369; R.S.1913, § 975; C.S.1922, § 875; C.S.1929, § 26-129.

Section is permissive, and does not deprive board of power to deduct the amount of taxes from a judgment rendered in district court. State ex rel. Hershiser v. Holt County, 89 Neb. 445, 131 N.W. 960 (1911).

23-146 Repealed. Laws 1983, LB 370, § 28.

23-147 Repealed. Laws 1983, LB 370, § 28.

(c) COMMISSIONER SYSTEM

23-148 Commissioners; election; township organization, change to commissioner system; procedure.

The county board of commissioners in all counties having not more than three hundred thousand inhabitants shall consist of three persons, except that the registered voters in any county containing not more than three hundred thousand inhabitants may vote at any general election as to whether their county board shall consist of three or five commissioners. The registered voters of counties under township organization voting as to a change to the commissioner system may vote at the same time as to the number of commissioners desired, except that the registered voters of counties may vote to have the same number of commissioners as there were supervisors in the county pursuant to sections 23-296 and 23-297 and to retain the existing county supervisor district boundaries until it becomes necessary to draw district boundaries under section 32-553. Upon the completion of the canvass by the county canvassing board, the proposition shall be decided and, if the number of commissioners is increased, vacancies shall be deemed to exist and the procedures set forth in section 32-567 shall be instituted.

Source: Laws 1879, § 53, p. 369; Laws 1887, c. 29, § 1, p. 359; Laws 1891, c. 21, § 1, p. 225; Laws 1903, c. 30, § 1, p. 277; R.S.1913, § 978; Laws 1917, c. 16, § 1, p. 77; Laws 1919, c. 69, § 1, p. 182; C.S.1922, § 878; C.S.1929, § 26-132; R.S.1943, § 23-148; Laws 1945, c. 42, § 1, p. 202; Laws 1947, c. 62, § 2, p. 197; Laws 1951, c. 48, § 1, p. 165; Laws 1957, c. 60, § 1, p. 278; Laws 1979, LB 331, § 2; Laws 1985, LB 53, § 1; Laws 1991, LB 789, § 4; Laws 1994, LB 76, § 534.

Cross References

For discontinuance of township organization, see sections 23-292 to 23-299.

Increase in number of commissioner districts requires redistricting. Ludwig v. Board of County Commissioners of Sarpy County, 170 Neb. 600, 103 N.W.2d 838 (1960).

Removal of county commissioner out of district, where he continues to act, does not render void any order of county board in which he participates. Horton v. Howard, 97 Neb. 575, 150 N.W. 633 (1915).

Member of board must reside in district from which elected and office becomes vacant when he removes. State ex rel. Malloy v. Skirving, 19 Neb. 497, 27 N.W. 723 (1886).

23-149 Commissioners; number; petition to change; election; ballot; form.

Whenever in counties not under township organization a petition or petitions for the submission of the question regarding the number of commissioners the county will have, signed by not less than two hundred registered voters of the county voting at the last general election, are filed in the office of the county clerk or election commissioner not less than seventy days before the date of any general election, the county clerk or election commissioner shall cause the question to be submitted to the voters of the county at such election and give notice thereof in the general notice of such election. The forms of ballots shall be respectively: For three commissioners and For five commissioners; and the same shall be printed upon the regular ballots cast for officers voted for at such election and shall be counted and canvassed in the same manner. If a majority of votes cast at the election favor the proposition For five commissioners, thereafter the county shall have five commissioners, and if a majority of the ballots cast at the election favor the proposition For three commissioners, thereafter the county shall have three commissioners.

Source: Laws 1891, c. 21, § 1, p. 226; Laws 1903, c. 30, § 1, p. 277; R.S.1913, § 978; Laws 1917, c. 18, § 1, p. 78; Laws 1919, c. 69, § 1, p. 183; C.S.1922, § 878; C.S.1929, § 26-132; R.S.1943, § 23-149; Laws 1969, c. 259, § 1, p. 958; Laws 1973, LB 75, § 1; Laws 1991, LB 789, § 5.

Results of election required change in number of commissioner districts. Ludwig v. Board of County Commissioners of Sarpy County, 170 Neb. 600, 103 N.W.2d 838 (1960).

23-150 Commissioners; qualifications.

(1) The commissioners shall be registered voters and residents of their respective districts.

(2) Beginning in 1992, any person seeking nomination or election to the county board of commissioners in a county having more than three hundred thousand inhabitants shall have resided within the district he or she seeks to represent for at least six months immediately prior to the date on which he or she is required to file as a candidate for such office. No person shall be eligible to be appointed to the county board in such counties unless he or she has resided in the district he or she would represent for at least six months prior to assuming office.

Source: Laws 1879, § 53, p. 369; Laws 1887, c. 29, § 1, p. 359; Laws 1891, c. 21, § 1, p. 227; Laws 1903, c. 30, § 1, p. 278; R.S.1913, § 978; Laws 1917, c. 16, § 1, p. 78; Laws 1919, c. 69, § 1, p. 183; C.S.1922, § 878; C.S.1929, § 26-132; R.S.1943, § 23-150; Laws 1991, LB 789, § 6; Laws 1994, LB 76, § 535.

23-151 Commissioner system; districts; number; election; redistricting; commissioners; election.

(1) Each county under commissioner organization having not more than three hundred thousand inhabitants shall be divided into three districts numbered respectively, one, two, and three, or into five districts as provided for in sections 23-148 and 23-149 numbered respectively, one, two, three, four, and five. Beginning October 1, 1991, each county having more than three hundred

thousand inhabitants shall be divided into seven districts numbered respectively, one, two, three, four, five, six, and seven.

(2) Such districts shall consist of two or more voting precincts comprising compact and contiguous territory and embracing a substantially equal division of the population of the county. District boundary lines shall not be subject to alteration more than once every ten years.

(3)(a) In counties having more than three hundred thousand inhabitants, the establishment of district boundary lines pursuant to subsection (1) of this section shall be completed not later than October 1, 1991, or within one year after the county attains a population of more than three hundred thousand inhabitants, whichever occurs later. Beginning in 2001 and every ten years thereafter, the district boundary lines of any county having more than three hundred thousand inhabitants shall be redrawn, if necessary to maintain substantially equal district populations, by the date specified in section 32-553.

(b) The establishment of district boundary lines and any alteration thereof under this subsection shall be done by the county board. If the county board fails to do so by the applicable deadline, district boundaries shall be drawn by the election commissioner within six months after the deadline established for the drawing or redrawing of district boundaries by the county board. If the election commissioner fails to meet such deadline, the remedies established in subsection (3) of section 32-555 shall apply.

(4) The district boundary lines shall not be changed at any session of the county board unless all of the commissioners are present at such session.

(5) Commissioners shall be elected as provided in section 32-528. Elections shall be conducted as provided in the Election Act.

Source: Laws 1879, § 54, p. 369; Laws 1887, c. 29, § 2, p. 359; Laws 1891, c. 21, § 1, p. 227; Laws 1903, c. 30, § 1, p. 278; Laws 1913, c. 150, § 1, p. 386; R.S.1913, § 979; Laws 1915, c. 19, § 1, p. 78; Laws 1917, c. 16, § 2, p. 78; Laws 1919, c. 69, § 2, p. 183; C.S.1922, § 879; C.S.1929, § 26-133; Laws 1931, c. 39, § 1, p. 132; C.S.Supp.,1941, § 26-133; R.S.1943, § 23-151; Laws 1947, c. 62, § 3, p. 198; Laws 1963, c. 111, § 1, p. 439; Laws 1969, c. 148, § 1, p. 706; Laws 1973, LB 552, § 2; Laws 1978, LB 632, § 3; Laws 1979, LB 331, § 3; Laws 1990, LB 81, § 1; Laws 1991, LB 789, § 7; Laws 1994, LB 76, § 536.

Cross References

Election Act, see section 32-101.

Term population means the whole number of people in the county. Ludwig v. Board of County Commissioners of Sarpy County, 170 Neb. 600, 103 N.W.2d 838 (1960).

Act of 1915 was declared unconstitutional because of denial of equal voice in government by manner of formation of election districts. State ex rel. Harte v. Moorhead, 99 Neb. 527, 156 N.W. 1067 (1916).

Under 1913 amendment, county commissioners were elected in even-numbered years for a term of four years. De Larm v. Van Camp, 98 Neb. 857, 154 N.W. 717 (1915).

Change of terms of county commissioners to four years sustained as constitutional. State ex rel. Elsasser v. McDonald, 98 Neb. 59, 151 N.W. 931 (1915).

Commissioners elected prior to amendment of law hold office for four years and until their successors are elected and qualified. Best v. Moorhead, 96 Neb. 602, 148 N.W. 551 (1914), overruling State ex rel. Hensley v. Plasters, 74 Neb. 652, 105 N.W. 1092 (1905).

Under former law, term of county commissioner was three years. State ex rel. O'Gara v. Furley, 95 Neb. 161, 145 N.W. 343 (1914).

Board may change district boundaries, but terms of members are not altered by change. State ex rel. Connolly v. Haverly, 62 Neb. 767, 87 N.W. 959 (1901); State ex rel. Snell v. Westcott, 34 Neb. 84, 51 N.W. 599 (1892).

23-152 Repealed. Laws 1994, LB 76, § 615.

23-153 County board; joint sessions; mileage reimbursement.

(1) The county boards of two or more counties may meet and hold joint sessions for the transaction of joint county business, including, but not limited to, consolidation agreements pursuant to sections 22-401 to 22-416 and 22-418.

(2) When traveling to and from any county board meeting, members of the county board may be reimbursed for mileage at the rate provided in section 81-1176.

Source: Laws 1879, § 56, p. 370; R.S.1913, § 981; C.S.1922, § 881; C.S.1929, § 26-135; R.S.1943, § 23-153; Laws 1969, c. 149, § 1, p. 707; Laws 1984, LB 671, § 1; Laws 1996, LB 1011, § 7; Laws 1996, LB 1085, § 28; Laws 1997, LB 40, § 1; Laws 1997, LB 269, § 29.

County commissioners are required to meet for the transaction of business for the county at the courthouse in their respective counties, or at the usual place of holding sessions of the district court. Shold v. Van Treeck, 82 Neb. 99, 117 N.W. 113 (1908).

Board can transact business only at county seat. Board of Comrs. of Merrick County v. Batty, 10 Neb. 176, 4 N.W. 959 (1880).

23-154 County board; special sessions; notice.

The county clerk shall have the power to call special sessions when the interests of the county demand it, upon giving five days' notice of the time and object of calling the commissioners together, by posting up notices in three public places in the county, or by publication in a newspaper published therein.

Source: Laws 1879, § 57, p. 370; R.S.1913, § 982; C.S.1922, § 882; C.S.1929, § 26-136.

Failure of clerk to publicize special meeting regarding initiative petition for hospital bond election did not invalidate resulting election. Shadbolt v. County of Cherry, 185 Neb. 208, 174 N.W.2d 733 (1970).

Failure of county clerk to make record of call for special meeting of county board does not invalidate call, where it was in fact made and due notice given, and record of county board shows meeting pursuant thereto. Brooks v. MacLean, 95 Neb. 16, 144 N.W. 1067 (1914).

Meetings are presumed to be regularly called. Green v. Lancaster County, 61 Neb. 473, 85 N.W. 439 (1901).

Board can transact business only at regular or called meeting. Morris v. Merrell, 44 Neb. 423, 62 N.W. 865 (1895).

Two members of the board, when agreed, may transact business, and may call an election. State ex rel. Harvey v. Piper, 17 Neb. 614, 24 N.W. 204 (1885).

Board is not confined to business mentioned in call. Commissioners of Kearney County v. Kent, 5 Neb. 227 (1876).

23-155 County board; transaction of business; majority required.

When two only of the commissioners of the board shall attend, and shall be divided on any question, the decision thereof shall be deferred until the next meeting of the board, and then the matter shall be decided by a majority of the board.

Source: Laws 1879, § 58, p. 370; R.S.1913, § 983; C.S.1922, § 883; C.S.1929, § 26-137.

23-156 County board; chairman; term; duties.

The board of county commissioners at its regular meeting in January of each year shall elect a chairman of the board to serve for the ensuing year, and such chairman shall sign all warrants on the treasurer for money to be paid out of the county treasury.

Source: Laws 1879, § 59, p. 371; Laws 1887, c. 29, § 3, p. 360; Laws 1891, c. 21, § 2, p. 228; R.S.1913, § 984; Laws 1921, c. 154, § 1, p. 636; C.S.1922, § 884; C.S.1929, § 26-138.

Warrants issued by county board are void if not for purpose within their jurisdiction. Oakley v. Valley County, 40 Neb. 900, 59 N.W. 368 (1894).

23-157 Repealed. Laws 1994, LB 76, § 615.

23-158 Repealed. Laws 1972, LB 1032, § 287.

(d) BORROWING MONEY TO PAY WARRANTS

23-159 Repealed. Laws 1963, c. 339, § 1.

23-160 Repealed. Laws 1963, c. 339, § 1.

23-160.01 Authority to borrow money; conditions.

The county board of each county in this state may borrow money in an amount sufficient to pay all valid, legally existing warrants of the county hereafter drawn on any county fund, which is legally entitled to participate in the annual allocation of revenue, but subject to the following limitations and requirements, to wit:

(1) Money shall not be borrowed in excess of the amount required to pay warrants issued and embraced within the limits imposed by law upon the right of a county to draw and issue warrants.

(2) The money so borrowed may not be used for any purpose other than payment of such warrants.

(3) The obligation thus incurred shall be evidenced by a negotiable promissory note or notes issued in the name of the county, signed by the chairman of the board and witnessed by the county clerk.

(4) The note may run for not more than one year, but shall be callable by the county at any time, and may draw interest at a rate to be determined by the county board.

(5) Such note or notes, before being negotiated, shall be presented to the county treasurer of the county and registered by said officer, and shall be payable out of the revenue collected, received and credited to such fund or funds.

Source: Laws 1943, c. 58, § 1, p. 232; R.S.1943, § 23-160.01; Laws 1976, LB 696, § 1.

23-160.02 Authority to use idle funds.

The county board of any county having more than two hundred thousand population may use money available in any fund of the county, if not presently or in the immediate future needed for the use of such fund, with which to take up, as an investment, legal valid warrants drawn upon any other fund of the county in which there may not be money presently available with which to pay such warrant; but such taking up of a warrant shall constitute and be deemed a purchase thereof, as an investment of idle money in the fund for which acquired. Any warrant, so taken by way of investment, shall be registered to the credit of the fund from which the money was taken with which to acquire the warrant and shall not draw interest.

Source: Laws 1943, c. 58, § 2, p. 232.

(e) COUNTY ZONING

23-161 Repealed. Laws 1967, c. 117, § 19.

23-162 Repealed. Laws 1967, c. 117, § 19.

23-163 Repealed. Laws 1967, c. 117, § 19.

23-164 Adjacent territory; regulation; hearings; notice by publication; written notice to chairperson of planning commission.

The county board shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, enforced, and, from time to time, amended, supplemented, or changed. No such regulation, restriction, or boundary shall become effective until after public hearings are held by both the county planning commission and county board in relation thereto, when its parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be given by the publication thereof in a legal newspaper of general circulation in such county one time at least ten days prior to such hearing. Notice of the time and place of such hearing shall also be given in writing to the chairperson of any municipal, county, or joint planning commission in the State of Nebraska which has jurisdiction over land within three miles of the property affected by such action. In the absence of a planning commission, such notice shall be given to the clerks of units of local government in the State of Nebraska having jurisdiction over land within three miles of the property affected by such action.

Source: Laws 1941, c. 131, § 12, p. 511; C.S.Supp.,1941, § 26-152; R.S.1943, § 23-164; Laws 1975, LB 410, § 25; Laws 1996, LB 299, § 17.

Timely objection by a litigant with standing may nullify a rezoning resolution by a county board that has not adopted a comprehensive development plan conformable to statute. Bagley v. County of Sarpy, 189 Neb. 393, 202 N.W.2d 841 (1972).

Board's only statutory power being to grant zoning variances resolution purporting to grant exemption construed to grant variance and action presumed correct until changed by court, and requirement of immediate compliance proper. Adler v. Lynch, 415 F.Supp. 705 (D. Neb. 1976).

23-165 Adjacent territory; regulation; amendments; objections; hearings.

Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of twenty percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred feet therefrom, or to those directly opposite thereto extending one hundred feet from the street frontage of such opposite lots, and such change is not in accordance with the comprehensive development plan, such amendments shall not become effective except by the favorable vote of two-thirds majority of the county board. The provisions of section 23-164 relative to public hearings and official notice shall apply equally to all changes or amendments.

Source: Laws 1941, c. 131, § 13, p. 511; C.S.Supp.,1941, § 26-153; R.S.1943, § 23-165; Laws 2005, LB 161, § 11.

Timely objection by a litigant with standing may nullify a rezoning resolution by a county board that has not adopted a comprehensive development plan conformable to statute. Bagley v. County of Sarpy, 189 Neb. 393, 202 N.W.2d 841 (1972).

Board's only statutory power being to grant zoning variances resolution purporting to grant exemption construed to grant variance and action presumed correct until changed by court,

and requirement of immediate compliance proper. Adler v. Lynch, 415 F.Supp. 705 (D. Neb. 1976).

23-166 Repealed. Laws 1967, c. 117, § 19.

23-167 Repealed. Laws 1967, c. 117, § 19.

23-168 Repealed. Laws 1975, LB 410, § 34.

23-168.01 Board of adjustment; members; appointment; qualifications; term; vacancy; rules and regulations; records; open to public.

(1) The county board shall appoint a board of adjustment which shall consist of five members, plus one additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason, each to be appointed for a term of three years and be removable for cause by the appointing authority upon written charges and after public hearing. No member of the board of adjustment shall be a member of the county board of commissioners or county board of supervisors. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the board of adjustment shall be appointed by the county board from the membership of the county planning commission, and the loss of membership on the planning commission by such member shall also result in his immediate loss of membership on the board of adjustment and the appointment of another planning commissioner to the board of adjustment.

(2) The board of adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to sections 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed with the county clerk and shall be a public record.

Source: Laws 1967, c. 117, § 8, p. 372; Laws 1975, LB 410, § 26; Laws 1978, LB 186, § 9.

The specific statutory procedure for appealing local administrative decisions to a board of adjustment foreclosed a landowner's ability to appeal by a petition in error the county board of supervisors' denial of a conditional use permit. Mogensen v. Board of Supervisors, 268 Neb. 26, 679 N.W.2d 413 (2004).

23-168.02 Board of adjustment; decision; appeal.

(1) An appeal to the board of adjustment may be taken by any person or persons aggrieved, or by any officer, department, board, or bureau of the county affected by any decision of an administrative officer or planning commission. Such appeal shall be taken within a reasonable time, as provided by the rules of the board of adjustment, by filing with the board a notice of appeal specifying the grounds thereof. The officer or agency from whom the appeal is taken shall transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.

(2) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest,

and decide the same within a reasonable time. Any party may appear at the hearing in person, by agent, or by attorney.

Source: Laws 1967, c. 117, § 9, p. 372.

The specific statutory procedure for appealing local administrative decisions to a board of adjustment foreclosed a landowner's ability to appeal by a petition in error the county board of supervisors' denial of a conditional use permit. Mogensen v. Board of Supervisors, 268 Neb. 26, 679 N.W.2d 413 (2004).

One who enjoys benefit of zoning variance is entitled to notice and hearing before change. Adler v. Lynch, 415 F.Supp. 705 (D. Neb. 1976).

23-168.03 Board of adjustment; powers; variance; when permitted; power to reverse or modify action.

(1) The board of adjustment shall, subject to such appropriate conditions and safeguards as may be established by the county board, have only the following powers:

(a) To hear and decide appeals when it is alleged by the appellant that there is an error in any order, requirement, decision, or refusal made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures. The board of adjustment shall have no authority to hear and decide appeals regarding conditional use permits or special exceptions which may be granted pursuant to section 23-114.01;

(b) To hear and decide, in accordance with the provisions of any regulation, requests for interpretation of any map; and

(c) When by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the adoption of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under sections 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376 would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any zoning regulations, but no such variance shall be authorized unless the board of adjustment finds that: (i) The strict application of the resolution would produce undue hardship; (ii) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; (iii) the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and (iv) the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.

(2) No variance shall be authorized unless the board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

(3) In exercising the powers granted in this section, the board may, in conformity with the provisions of sections 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376, reverse or affirm,

wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as shall be proper, and to that end shall have the power of the officer or agency from whom the appeal is taken. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variation in such regulation.

Source: Laws 1967, c. 117, § 10, p. 373; Laws 1969, c. 114, § 2, p. 527; Laws 1975, LB 410, § 27; Laws 1978, LB 186, § 10; Laws 2004, LB 973, § 4.

Cross References

For authorization to act as a zoning board of adjustment for a municipality, see section 19-912.01.

The specific statutory procedure for appealing local administrative decisions to a board of adjustment foreclosed a landowner's ability to appeal by a petition in error the county board of supervisors' denial of a conditional use permit. Mogensen v. Board of Supervisors, 268 Neb. 26, 679 N.W.2d 413 (2004).

A board of supervisors is an administrative agency within the meaning of this section. Niewohner v. Antelope Cty. Bd. of Adjustment, 12 Neb. App. 132, 668 N.W.2d 258 (2003).

Board's only statutory power being to grant zoning variances resolution purporting to grant exemption construed to grant variance and action presumed correct until changed by court, and requirement of immediate compliance proper. Adler v. Lynch, 415 F.Supp. 705 (D. Neb. 1976).

23-168.04 Board of adjustment; decision; appeal; procedure.

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any officer, department, board, or bureau of the county, may present to the district court for the county a petition, duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within fifteen days after the filing of the decision in the office of the board of adjustment. Upon the filing of such petition a summons shall be issued and be served upon the board of adjustment together with a copy of the petition, and return of service shall be made within four days after the issuance of the summons. Within ten days after the return day of the summons, the county board shall file an answer to the petition which shall admit or deny the substantial averments of the petition and matters in dispute as disclosed by the petition. The answer shall be verified in like manner as required for the petition. At the expiration of the time for filing the answer, the court shall proceed to hear and determine the cause without delay and shall render judgment according to law. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. Appeal to the district court shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order. Any appeal from such judgment of the district court shall be prosecuted in accordance with the general laws of the state regulating appeals in actions at law.

Source: Laws 1967, c. 117, § 11, p. 374.

Verification of a petition under this section is a purely procedural direction which is formal but does not go to the essence of the law with regard to requirements for jurisdiction of the courts. Citizens Opposing Indus. Livestock v. Jefferson Cty., 269 Neb. 725, 695 N.W.2d 435 (2005).

The specific statutory procedure for appealing local administrative decisions to a board of adjustment foreclosed a landowner's ability to appeal by a petition in error the county board of supervisors' denial of a conditional use permit. Mogensen v. Board of Supervisors, 268 Neb. 26, 679 N.W.2d 413 (2004).

Board's only statutory power being to grant zoning variances resolution purporting to grant exemption construed to grant variance and action presumed correct until changed by court, and requirement of immediate compliance proper. Adler v. Lynch, 415 F.Supp. 705 (D. Neb. 1976).

23-169 Repealed. Laws 1967, c. 117, § 19.

23-170 Adjacent territory; regulation; statutes and ordinances; highest standard required by either to govern.

Whenever the regulations made under authority of sections 23-164 to 23-174 require a greater width or size of yard, courts or other open spaces, or require a lower height of building or a less number of stories or require a greater percentage of lot to be left unoccupied or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of said sections shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open space or require a lower height of building or a less number of stories or require a greater percentage of lot to be left unoccupied or impose other higher standards than are required by the regulations made under authority of said sections, the provisions of such statute or local ordinance or regulations shall govern.

Source: Laws 1941, c. 131, § 18, p. 514; C.S.Supp.,1941, § 26-158.

23-171 Repealed. Laws 1975, LB 410, § 34.

23-172 Standard codes; adoption; copy on file; area where applicable.

The county board may adopt by resolution, which shall have the force and effect of law, the conditions, provisions, limitations, and terms of a building code, a plumbing code, an electrical code, a fire prevention code, or any other code relating to building or relating to the erection, construction, reconstruction, alteration, repair, conversion, maintenance, placing, or using of any building, structure, automobile trailer, house trailer, or cabin trailer. For this purpose, the county board may adopt any standard code which contains rules or regulations printed as a code in book or pamphlet form by reference to such code or portions thereof without setting forth in the resolution the conditions, provisions, limitations, or terms of such code. When such code or any such standard code or portion thereof is incorporated by reference into any resolution, it shall have the same force and effect as though it has been spread at large in such resolution without further or additional publication. One copy of such code or such standard code or portion thereof shall be filed for use and examination by the public in the office of the clerk of such county prior to its adoption. The adoption of any standard code by reference shall be construed to incorporate such amendments thereof as may be made if the copy of such standard code is kept current in the office of the clerk of the county. If there is no county resolution adopting a plumbing code in effect for such county, the American National Standards Institute Uniform Plumbing Code, ANSI A40-1993, shall apply to all buildings. Any code adopted and approved by the county board, as provided in this section, or if there is no county resolution adopting a plumbing code in effect for such county, the American National Standards Institute Uniform Plumbing Code, ANSI A40-1993, and the building

permit requirements or occupancy permit requirements imposed by such code or by sections 23-114.04 and 23-114.05, shall apply to all of the county except within the limits of any incorporated city or village and except within an unincorporated area where a city or village has been granted zoning jurisdiction and is exercising such jurisdiction. Nothing in this section shall be interpreted as creating an obligation for the county to inspect plumbing work done within its jurisdiction to determine compliance with the plumbing code.

Source: Laws 1941, c. 131, § 19, p. 515; C.S.Supp.,1941, § 26-159; R.S.1943, § 23-172; Laws 1961, c. 87, § 6, p. 302; Laws 1963, c. 57, § 5, p. 241; Laws 1967, c. 117, § 12, p. 375; Laws 1975, LB 410, § 28; Laws 1993, LB 35, § 1; Laws 1996, LB 1304, § 3.

23-173 Zoning resolutions; adoption; publication; printing; effect.

The county board may also pass, approve and publish any other resolution governing and controlling zoning after the zoning district is created and established as provided in section 23-114.03, and when such resolutions are passed and approved, they shall be published as provided in section 23-172. If any resolution is published by printing the same in book or pamphlet form, purporting to be published by authority of the county board, the same need not be otherwise published, and such book or pamphlet shall be received as evidence of the passage and legal publication of such resolution, as of the dates mentioned in such book or pamphlet, in all courts without further proof.

Source: Laws 1941, c. 131, § 19, p. 515; C.S.Supp.,1941, § 26-159; R.S.1943, § 23-173; Laws 1967, c. 117, § 13, p. 376; Laws 1975, LB 410, § 29.

§ 23-173.01 Nonconforming use; termination; restoration.

The use of a building, structure, or land, existing and lawful at the time of the enactment of a zoning regulation, or at the time of an amendment of a regulation, may, except as provided in this section, be continued, although such use does not conform with the provisions of such regulation or amendment, and such use may be extended throughout the same building if no structural alteration of such building is proposed or made for the purpose of such extension. If such nonconforming use is in fact discontinued for a period of twelve months, such right to the nonconforming use shall be forfeited and any future use of the building and premises shall conform to the regulation. The county board may provide in any zoning regulation for the restoration, reconstruction, extension, or substitution of nonconforming uses upon such terms and conditions as may be set forth in the zoning resolution. The county board may, in any zoning regulation, provide for the termination of nonconforming uses, either by specifying the period or periods in which nonconforming uses shall be required to cease, or by providing a formula whereby the compulsory termination of a nonconforming use may be so fixed as to allow for the recovery or amortization of the investment in the nonconformance, except that in the case of a legally erected outdoor advertising sign, device, or display, no amortization schedule shall be used.

Source: Laws 1967, c. 117, § 14, p. 376; Laws 1981, LB 241, § 4.

23-174 Violations; penalty.

If any person shall violate any of the provisions of sections 23-164 to 23-174 for which penalty is not elsewhere provided therein, or if any person shall violate any of the provisions of any resolution adopted under the power and authority granted to county boards under section 23-174.01, 23-174.02, 23-174.03, or 23-174.10 or under sections 23-114, 23-172, and 23-173, such person shall be punished upon conviction in the same manner as for violation of section 23-114.05 in accordance with the penalties prescribed therein.

Source: Laws 1941, c. 131, § 19, p. 516; C.S.Supp.,1941, § 26-159; R.S.1943, § 23-174; Laws 1961, c. 87, § 7, p. 303; Laws 1967, c. 117, § 15, p. 377; Laws 1969, c. 151, § 1, p. 710.

23-174.01 County zoning; cities of the primary class; grant of authority.

Every county in which is located a city of the primary class shall have power within the county, except within the area over which zoning jurisdiction has been granted to any city or village and over which such city or village is exercising such jurisdiction, to regulate and restrict (1) the location, height, bulk, and size of buildings and other structures, (2) the percentage of a lot that may be occupied, (3) the size of yards, courts, and other open spaces, (4) the density of population, and (5) the locations and uses of buildings, structures, and land for trade, industry, business, residences and other purposes. Such county shall have power within the county, except within the area over which zoning jurisdiction has been granted to any city or village and over which such city or village is exercising such jurisdiction, to divide the county zoned into districts of such number, shape, and area as may be best suited to carry out the purposes of this section, and to regulate, restrict, or prohibit the erection, construction, reconstruction, alteration, or use of buildings, structures, or land within the total area zoned or within districts. All such regulations shall be uniform for each class or kind of buildings throughout each district, but regulations applicable to one district may differ from those applicable to other districts. Such zoning regulations shall be designed to secure safety from fire, flood, and other dangers and to promote the public health, safety, and general welfare and shall be made with consideration having been given to the character of the various parts of the area zoned and their peculiar suitability for particular uses and types of development and with a view to conserving property values and encouraging the most appropriate use of land throughout the area zoned in accordance with a comprehensive plan. The provisions of section 23-114 which relate to manufactured homes shall apply to such zoning regulations. Such zoning regulations may include reasonable provisions regarding nonconforming uses and their gradual elimination.

Source: Laws 1961, c. 87, § 1, p. 299; Laws 1978, LB 186, § 11; Laws 1994, LB 511, § 5.

23-174.02 Zoning resolution; regulations.

The zoning resolution shall be adopted and amended, and regulations made and promulgated not inconsistent therewith, in the manner provided in sections 23-114, 23-114.03, 23-164, and 23-165.

Source: Laws 1961, c. 87, § 2, p. 300; Laws 1967, c. 117, § 16, p. 377.

23-174.03 County zoning; cities of the primary class; subdivision and platting into lots and streets; approval requirements; definition of terms.

(1) No owner of any real estate located in a county in which is located a city of the primary class, except within the area over which subdivision jurisdiction has been granted to any city or village, and such city or village is exercising such jurisdiction, shall be permitted to subdivide, plat, or lay out such real estate in building lots and streets, or other portions of the same intended to be dedicated for public use or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto, without first having obtained the approval thereof by the county board of such county. In lieu of approval by the county board, the county board may designate specific types of plats which may be approved by the county planning commission or the planning director. No plat or subdivision of such real estate shall be recorded in the office of the register of deeds or have any force or effect unless the same is approved by the county board, the county planning commission, or the planning director of such county. Such a county shall have authority within the area described in this subsection (a) to regulate the subdivision of land for the purpose, whether immediate or future, of transfer of ownership or building development, except that the county shall have no power to regulate subdivision in those instances where the smallest parcel created is more than ten acres in area, (b) to prescribe standards for laying out subdivisions in harmony with the comprehensive plan, (c) to require the installation of improvements by the owner or by the creation of public improvement districts, or by requiring a good and sufficient bond guaranteeing installation of such improvements, and (d) to require the dedication of land for public purposes.

(2) For purposes of this section, subdivision means the division of a lot, tract, or parcel of land into two or more lots, sites, or other divisions of land for the purpose, whether immediate or future, of ownership or building development, except that the division of land shall not be considered to be subdivision when the smallest parcel created is more than ten acres in area.

(3) Subdivision plats shall be approved by the county planning commission on recommendation by the planning director and county engineer and may be submitted to the county board for its consideration and action. The county board may withhold approval of a plat until the county engineer has certified that the improvements required by the regulations have been satisfactorily installed or until a sufficient bond guaranteeing installation of the improvements has been posted with the county or until public improvement districts are created. The county board may provide procedures in land subdivision regulation for appeal by any person aggrieved by any action of the county planning commission or planning director.

Source: Laws 1961, c. 87, § 8, p. 303; Laws 1978, LB 186, § 12; Laws 1980, LB 61, § 3; Laws 2005, LB 9, § 1.

23-174.04 County zoning; cities of the primary class; planning department; planning director.

In every county in which is located a city of the primary class, there shall be created a planning department, which shall consist of a county planning commission, a planning director, and such subordinate employees as are required to administer the planning program set forth in sections 23-174.01 to 23-174.09. The planning director shall serve as the secretary of the county

planning commission and as the administrative head of the planning department.

Source: Laws 1961, c. 87, § 9, p. 304.

23-174.05 County; comprehensive plan; requirements; contents.

The general plan for the improvement and development of the county outside of the jurisdiction of any city or village shall be known as the comprehensive plan. This plan for governmental policies and action shall include the pattern and intensity of land use, the provision of public facilities including transportation and other governmental services, the effective development and utilization of human and natural resources, the identification and evaluation of area needs including housing, employment, education, and health and the formulation of programs to meet such needs, surveys of structures and sites determined to be of historic, cultural, archaeological, or architectural significance or value, long-range physical and fiscal plans for governmental policies and action, and coordination of all related plans and activities of the state and local governments and agencies concerned. The comprehensive plan, with the accompanying maps, plats, charts, and descriptive and explanatory materials, shall show the recommendations concerning the physical development pattern of such area, taking into account the availability of and need for conserving land and other irreplaceable natural resources, the preservation of sites of historic, cultural, archaeological, and architectural significance or value, the projected changes in size, movement, and composition of population, the necessity for expanding housing and employment opportunities, and the need for methods of achieving modernization, simplification, and improvements in governmental structures, systems, and procedures related to growth objectives. The comprehensive plan shall, among other things, show:

(1) The general location, character, and extent of existing and proposed streets and highways and railroad, air, and other transportation routes and terminals;

(2) Existing and proposed public ways, parks, grounds, and open spaces;

(3) The general location, character, and extent of schools, school grounds, and other educational facilities and properties;

(4) The general location and extent of existing and proposed public utility installations;

(5) The general location and extent of community development and housing activities; and

(6) The general location of existing and proposed public buildings, structures, and facilities.

The comprehensive plan of the county shall include a land-use plan showing the proposed general distribution and general location of business and industry, residential areas, utilities, and recreational, educational, and other categories of public and private land uses. The land-use plan shall also show the recommended standards of population density based upon population estimates and providing for activities for which space should be supplied within the area covered by the plan. The comprehensive plan shall include and show proposals for acquisition, extension, widening, narrowing, removal, vacation, abandonment, sale, and other actions affecting public improvements.

Source: Laws 1961, c. 87, § 10, p. 304; Laws 1975, LB 111, § 3.

23-174.06 Planning director; prepare comprehensive plan; review by county planning commission; county board; adopt or modify plan.

The planning director shall be responsible for preparing a comprehensive plan of the county and amendments and extensions thereto, and for submitting such plans and modifications to the county planning commission for its consideration and action. The commission shall review such plans and modifications, and those which the county board may suggest, and, after holding at least one public hearing on each proposed action, shall provide its recommendations to the county board of commissioners within a reasonable period of time. The county board of commissioners shall review the recommendations of the planning commission and, after at least one public hearing on each proposed action, shall adopt or reject such plans in whole or in part and with or without modifications.

Source: Laws 1961, c. 87, § 11, p. 305; Laws 1975, LB 111, § 4.

23-174.07 Change to comprehensive plan; prior consideration by planning department; report.

No resolution which deals with the acquisition, extension, widening, narrowing, removal, vacation, abandonment, sale or other change relating to any public way, transportation, route, ground, open space, building, or structure, or other public improvement of a character included in the comprehensive plan, the subject matter of which has not been reported on by the planning department under the provisions of section 23-174.06, shall be adopted by the county board until such resolution shall first have been referred to the planning department and that department has reported regarding conformity of the proposed action with the comprehensive plan. The department's report shall specify the character and degree of conformity or nonconformity of each proposed action to the comprehensive plan, and a report in writing thereon shall be rendered to the county board within thirty days after the date of receipt of the referral unless a longer period is granted by the county board. If the department fails to render any such report within the allotted time, the approval of the department may be presumed by the county board.

Source: Laws 1961, c. 87, § 12, p. 305.

23-174.08 Zoning resolution; public hearing; notice; approval.

The planning director shall be responsible for the preparation of the zoning resolution and for submitting it to the county planning commission for its consideration and action. The commission shall review the proposed zoning resolution and, after holding at least one public hearing on each proposed action, shall approve or reject it in whole or in part and with or without modifications. When approved by the commission, the proposed resolution shall be submitted to the county board for its consideration, and the zoning resolution shall become effective when adopted by the county board. The county board of such county may amend, supplement, or otherwise modify the zoning resolution. Any such proposed amendment, supplement, or modification shall first be submitted to the planning commission for its recommendations and report. The planning commission shall hold at least one public hearing with relation thereto, before submitting its recommendations and report. After the recommendations and report of the planning commission have been filed, the county board shall, before enacting any proposed amendment, supplement,

or modification, hold a public hearing in relation thereto. Notice of the time and place of hearings above referred to shall be given by publication thereof in a paper of general circulation in the county at least one time at least five days before the date of hearing. Notice with reference to proposed amendments, supplements, or modifications of the zoning resolution shall also be posted in a conspicuous place on or near the property upon which the action is pending. Such notice shall be easily visible from the street or highway, and shall be posted at least five days before the hearing.

Source: Laws 1961, c. 87, § 13, p. 306.

23-174.09 Board of zoning appeals; powers; duties.

There may be created a board of zoning appeals comprised of five members appointed by the county board, which board shall have power to hear and decide appeals from any decision or order of the building inspector or other officers charged with the enforcement of the zoning resolution in those cases where it is alleged that such decision or order is in error. The board shall also have power to decide upon petitions for variances and, subject to such standards and procedures as the county board may provide in the zoning resolution, to vary the strict application of the height, area, parking, or density requirements to the extent necessary to permit the owner a reasonable use of his land in those specific instances where there are peculiar, exceptional, and unusual circumstances in connection with a specific parcel of land, which circumstances are not generally found within the locality or neighborhood concerned. The board may also have such related duties as the county board may assign. The county board may provide for appeals from a decision of the board.

Source: Laws 1961, c. 87, § 14, p. 307.

Cross References

For authorization to act for cities of the second class and villages, see section 84-155.

23-174.10 Public health, safety, and welfare regulations; county board may adopt.

In any county which has adopted county zoning regulations, the county board, by resolution, may make regulations as may be necessary or expedient to promote the public health, safety, and welfare, including regulations to prevent the introduction or spread of contagious, infectious, or malignant diseases; to provide rules for the prevention, abatement, and removal of nuisances, including the pollution of air and water; and make and prescribe regulations for the construction, location, and keeping in order of all slaughterhouses, stockyards, warehouses, sheds, stables, barns, commercial feedlots, dairies, junk and salvage yards, or other places where offensive matter is kept, or is likely to accumulate. Such regulations shall be not inconsistent with the general laws of the state and shall apply to all of the county except within the limits of any incorporated city or village, and except within the unincorporated area where a city or village has been granted zoning jurisdiction and is exercising such jurisdiction.

Source: Laws 1963, c. 105, § 1, p. 430; Laws 1969, c. 151, § 2, p. 710; Laws 1978, LB 807, § 1.

(f) EMPLOYEES' LIABILITY INSURANCE

23-175 County board; county vehicles; liability insurance procurement; effect; applicability.

When a county board employs a person and places in his or her charge and under his or her supervision trucks, automobiles, snowplows, road graders, or other vehicles and authorizes such employee to use them upon a public road, the county board shall purchase liability insurance to protect any such employee against loss occasioned by any acts of negligence resulting from the use of such vehicles or equipment. The insurance shall be purchased by public bidding at least once every three years in a limit of not less than one hundred thousand dollars to cover the bodily injury or injuries of one person and, subject to the limitation to one person, one million dollars to cover bodily injury or injuries to more than one person in the same accident and one hundred thousand dollars to cover property damage. The insurance policy may, in the discretion of the county board, contain a deductible provision for up to one thousand dollars of any claim in which event the county shall be considered a self-insurer for that amount. The insurance and bidding requirements of this section shall not apply to a county which is a member of a risk management pool formed pursuant to the Intergovernmental Risk Management Act. Any judgment against any employee shall not be collectible in whole or in part from any member of the county board.

Source: Laws 1957, c. 61, § 1, p. 279; Laws 1969, c. 138, § 24, p. 636; Laws 1993, LB 66, § 1; Laws 1998, LB 376, § 1.

Cross References

Intergovernmental Risk Management Act, see section 44-4301.

23-175.01 Transferred to section 13-401.

23-176 Repealed. Laws 1969, c. 138, § 28.

(g) DATA PROCESSING EQUIPMENT

23-177 Repealed. Laws 1985, LB 393, § 18.

23-178 Repealed. Laws 1985, LB 393, § 18.

23-179 Repealed. Laws 1985, LB 393, § 18.

(h) INTEREST IN PUBLIC CONTRACTS

23-180 Repealed. Laws 1986, LB 548, § 15.

23-181 Repealed. Laws 1986, LB 548, § 15.

23-182 Repealed. Laws 1986, LB 548, § 15.

23-183 Repealed. Laws 1986, LB 548, § 15.

23-184 Repealed. Laws 1986, LB 548, § 15.

23-185 Repealed. Laws 1986, LB 548, § 15.

(i) MOTOR VEHICLE AND MOTORBOAT SERVICES

23-186 Consolidation of services; county board; designation of official.

A county board may consolidate under the office of a designated county official the services provided to the public by the county assessor, the county clerk, and the county treasurer relating to the issuance of certificates of title, registration certificates, certificates of number, license plates, and renewal decals, notation and cancellation of liens, and collection of taxes and fees for motor vehicles, all-terrain vehicles, minibikes, snowmobiles, trailers, and motorboats as provided in the Motor Vehicle Certificate of Title Act, the Motor Vehicle Registration Act, the State Boat Act, and sections 18-1738, 18-1738.01, and 60-1803. In a county in which a city of the metropolitan class is located, the county board may designate the county treasurer to provide the services. In any other county, the county board may designate the county assessor, the county clerk, or the county treasurer to provide the services.

Source: Laws 1993, LB 112, § 1; Laws 1995, LB 37, § 1; Laws 1996, LB 464, § 1; Laws 1997, LB 271, § 13; Laws 2003, LB 333, § 32; Laws 2005, LB 274, § 227; Laws 2005, LB 276, § 99.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.
Motor Vehicle Registration Act, see section 60-301.
State Boat Act, see section 37-1291.

ARTICLE 2
COUNTIES UNDER TOWNSHIP ORGANIZATION

Cross References

Constitutional provision:
Township organization, adoption by electors, see Article IX, section 5, Constitution of Nebraska.
Officers, when elected, see sections 32-529 and 32-530.
Roads under township organization, see sections 39-1518 to 39-1527.

(a) ADOPTION OF TOWNSHIP ORGANIZATION; GENERAL PROVISIONS

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(a) ADOPTION OF TOWNSHIP ORGANIZATION; GENERAL PROVISIONS

23-201 Township organization; adoption.

At any general election that may be held in the several counties of the state, the qualified voters in any county may vote for or against township organization in such county.

Source: Laws 1895, c. 28, § 1, p. 131; R.S.1913, § 987; C.S.1922, § 887; C.S.1929, § 26-201.

1. Officers
2. Vacancies
3. Construction

1. Officers

Township organization is provided for and affords supervisors, who divide the county into townships. Franek v. Butler County, 126 Neb. 797, 254 N.W. 489 (1934).

Under former law, cities entitled to two supervisors voted as one district and for both supervisors. State ex rel. Brown v. Welsh, 62 Neb. 721, 87 N.W. 529 (1901).

Member of board is township officer and should address his resignation to town clerk. State ex rel. Godard v. Taylor, 26 Neb. 580, 42 N.W. 729 (1889).

Commissioners act until supervisors are organized. State ex rel. Lichty v. Musselman, 20 Neb. 174, 29 N.W. 307 (1886).

Adoption of township organization does not shorten term of county officers. State ex rel. Crossley v. Hedlund, 16 Neb. 566, 20 N.W. 876 (1884).

2. Vacancies

Vacancies in cities are filled by mayor and council. State ex rel. Truesdell v. Plambeck, 36 Neb. 401, 54 N.W. 667 (1893).

Vacancies on temporary organization of town should be filled by county clerk. State ex rel. Davis v. Forney, 21 Neb. 223, 31 N.W. 802 (1887).

3. Construction

York County stated to have adopted township form of government. Thompson v. James, 125 Neb. 350, 250 N.W. 237 (1933).

Act of 1895 relating to township organization sustained as constitutional. Van Horn v. State ex rel. Abbott, 46 Neb. 62, 64 N.W. 365 (1895).

The several statutes on township organization should be construed together. Albert v. Twohig, 35 Neb. 563, 53 N.W. 582 (1892).

23-202 Election; laws applicable.

The county commissioners on petition of two hundred and fifty or more legal voters of the county, shall cause to be submitted to the voters of the county the question of township organization, by ballot, to be written or printed, or partly written or partly printed thereon For township organization, or Against township organization, the votes to be counted, canvassed, and returned in like manner as votes for county officers.

Source: Laws 1895, c. 28, § 2, p. 131; R.S.1913, § 988; C.S.1922, § 888; C.S.1929, § 26-202.

Cross References

For canvass and return of votes, see Chapter 32, article 10.

23-203 When effective.

If it shall appear by the returns of said election that a majority of the legal voters of such county voting upon the proposition are for township organization, then the office of county commissioner and the board of county commissioners shall cease to exist on and after the meeting of the supervisors of the county as hereinafter provided, and the county so voting for the adoption of township organization shall thereafter be governed by and subject to the provisions of sections 23-201 to 23-299.

Source: Laws 1895, c. 28, § 3, p. 131; R.S.1913, § 989; C.S.1922, § 889; Laws 1927, c. 53, § 1, p. 208; C.S.1929, § 26-203; R.S.1943, § 23-203; Laws 1947, c. 64, § 1, p. 210.

23-204 Supervisor districts; formation; election of supervisors.

On the second Tuesday after the election under section 23-201 adopting township organization in any county, the county attorney, county clerk, and county treasurer of the county shall meet at the county seat of such county and shall, within three days from and after the first day of meeting, divide such county into seven districts to be known as supervisor districts. Such districts shall be divided as nearly as possible with regular boundary lines and in regular and compact form and shapes, and each of such districts shall as nearly as possible have the same number of inhabitants as any other district. No voting precinct shall be divided by any such district, except that in counties having cities of over one thousand inhabitants and when such cities have more inhabitants than the average outlying district, the county board shall add enough contiguous territory to such city so that the inhabitants in such city and contiguous territory equal the inhabitants of two of the other districts. The county attorney, county clerk, and county treasurer shall then divide the tract thus segregated into two supervisor districts with population as nearly equal as possible, and when so divided, each of the districts shall elect one supervisor who shall reside in such supervisor district and be nominated and elected by the registered voters residing in that district. If any such city has more than the requisite inhabitants for two supervisor districts, then sufficient outlying territory may be added to such city to make three supervisor districts. The supervisor in each supervisor district in such city shall reside in such supervisor district and be nominated and elected by the registered voters residing in that supervisor district. The remainder of the county outside of such city districts shall be divided so as to create a total of seven supervisor districts, except that if any

county under township organization has gone to an at-large basis for election of supervisors under section 32-554, the board of supervisors of such county may stay on the at-large voting basis.

Source: Laws 1895, c. 28, § 4, p. 131; Laws 1911, c. 36, § 1, p. 203; R.S.1913, § 990; Laws 1917, c. 17, § 1, p. 81; C.S.1922, § 890; C.S.1929, § 26-204; R.S.1943, § 23-204; Laws 1947, c. 64, § 2, p. 210; Laws 1973, LB 552, § 3; Laws 1979, LB 331, § 4; Laws 1991, LB 789, § 8; Laws 1994, LB 76, § 537.

Cross References

Election of officers, see sections 32-529 and 32-530.

In redistricting, requirements of approximately equal numbers in each district as provided by this section should be met. State ex rel. Rowe v. Emanuel, 142 Neb. 583, 7 N.W.2d 156 (1942).

This section is controlling in the division of counties with city districts. Van Horn v. State ex rel. Abbott, 46 Neb. 62, 64 N.W. 365 (1895).

There is no authority for existence of township board in cities of first class. Rittenhouse v. Bigelow, 38 Neb. 547, 58 N.W. 534 (1894).

After election adopting township organization, the county judge, county clerk, and county treasurer must divide the county into supervisor districts under rules in this section, but redistricting when required must be done under same rules by the county board. Obermiller v. Siegel, 340 F.Supp. 208 (D. Neb. 1972).

23-205 Supervisor districts; how numbered.

When the county has been divided as provided in section 23-204, the county attorney, county clerk and county treasurer shall at once proceed to number such districts from one to seven and in case of a city district as contemplated in said section, it shall give such city district two numbers, one odd and one even.

Source: Laws 1895, c. 28, § 5, p. 132; R.S.1913, § 991; C.S.1922, § 891; C.S.1929, § 26-205; R.S.1943, § 23-205; Laws 1947, c. 64, § 3, p. 211; Laws 1979, LB 331, § 5.

23-206 Supervisor districts; cities and villages.

In the event any city having one thousand inhabitants or more shall have enough inhabitants to form one supervisor district, then such city shall constitute one district, or in case the number of inhabitants is less than the number in the other districts, then so much contiguous territory shall be added to such city to give it sufficient inhabitants for one supervisor district. Villages may be enumerated with general districts, counting all the inhabitants therein as being within the districts wherein such town or village is situated; *Provided*, no village, or any part thereof, shall be included in or made a part of any supervisor district containing a city having one thousand inhabitants or more, or containing any part of such city.

Source: Laws 1895, c. 28, § 6, p. 133; R.S.1913, § 992; Laws 1917, c. 17, § 2, p. 82; C.S.1922, § 892; C.S.1929, § 26-206.

23-207 Supervisors; first board; how constituted.

The county attorney, county clerk, and county treasurer shall forthwith appoint seven supervisors, who shall duly qualify and file their oath of office and bond with the county judge within ten days after such appointment.

Source: Laws 1895, c. 28, § 7, p. 133; R.S.1913, § 993; C.S.1922, § 893; C.S.1929, § 26-207; R.S.1943, § 23-207; Laws 1947, c. 64, § 4, p. 211; Laws 1979, LB 331, § 6.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

Vacancies are filled by other members of board. State ex rel. Hunker v. West, 62 Neb. 461, 87 N.W. 176 (1901).

23-208 First board of supervisors; organization.

The newly appointed supervisors shall, after their bonds are duly approved, meet the first Tuesday in December following the election adopting township organization. They shall at once organize by electing one of the seven supervisors as chairman, who shall appoint all the necessary committees. From and after such meeting and organization the powers of the county commissioners shall cease and the board so organized shall have all the powers, and perform all and singular the duties performed by county boards as contemplated by law.

Source: Laws 1895, c. 28, § 8, p. 133; R.S.1913, § 994; C.S.1922, § 894; C.S.1929, § 26-208; R.S.1943, § 23-208; Laws 1947, c. 64, § 5, p. 211.

23-209 Board of supervisors; division of county.

When the board of supervisors shall have been organized as stated in section 23-208, they shall at once divide the county into townships. The board of supervisors shall divide the county into townships of sufficient population and territory to provide a workable township organization.

Source: Laws 1895, c. 28, § 9, p. 134; R.S.1913, § 995; C.S.1922, § 895; C.S.1929, § 26-209; R.S.1943, § 23-209; Laws 1969, c. 152, § 1, p. 718.

In a county under township organization, board of supervisors may create new towns. State ex rel. Town of Ewing v. Town of Golden, 99 Neb. 782, 157 N.W. 971 (1916).

23-210 Township; creation from city of second class; petition.

Wherever a city of the second class in a county under township organization forms a part of one or more townships in any county, the county board of said county is empowered to create a new township out of said city, whenever requested so to do by a petition or petitions signed by sixty percent of the electors of said city, and also by sixty percent of the electors of the outlying part of the township or townships, of which said city forms a part; *Provided, however,* that before final action is taken in such matter by said board, two weeks' notice of the filing of such petition, or petitions, and of the time when and place where a hearing thereon will be had, shall be given by publication in some newspaper published in said city, if any such there be.

Source: Laws 1915, c. 179, § 1, p. 363; C.S.1922, § 896; C.S.1929, § 26-210.

23-211 Township; creation from city of second class; boundaries; alteration.

If any change is made in the corporate boundaries of any city of the second class, after same has been formed into a separate township, the county board of the county in which said city is situated shall have the power to make corresponding changes in the township boundaries of the said city township without either a petition for or notice of such proposed changes.

Source: Laws 1915, c. 179, § 2, p. 363; C.S.1922, § 897; C.S.1929, § 26-211.

23-212 Township; change of name.

The board shall also at the meeting mentioned in sections 23-208 and 23-209 designate the name of each town, and may change the name of any town at any other meeting of such board upon a petition of a majority of the voters of such town.

Source: Laws 1895, c. 28, § 10, p. 134; R.S.1913, § 996; C.S.1922, § 898; C.S.1929, § 26-212; R.S.1943, § 23-212; Laws 1961, c. 88, § 1, p. 308.

23-213 Township; names; recording.

The county clerk shall record in a book kept for that purpose the names and boundaries of each town as designated by the county board, and shall forthwith forward an abstract thereof to the Auditor of Public Accounts of this state, who shall make a record of the same.

Source: Laws 1895, c. 28, § 11, p. 134; R.S.1913, § 997; C.S.1922, § 899; C.S.1929, § 26-213.

Road district is not a political entity. Townships may sue road overseers for breach of duty. Town of Denver v. Myers, 63 Neb. 107, 88 N.W. 191 (1901).

23-214 Chairman of township board; appointment; qualifications.

The county board shall also, at the meeting at which it shall fix and name the several townships, appoint for each township some suitable person, who is an elector within the township, as chairman of the township board. The person so appointed shall, on or before the first Tuesday in January next ensuing, take the oath of office and file a bond as provided by law. Such bond shall be approved by the board as provided by law. In case such person shall neglect or refuse to qualify, the county board shall at its regular January meeting appoint another who shall qualify as above stated. The person so appointed shall hold said office until his successor shall be duly elected and qualified as provided by law.

Source: Laws 1895, c. 28, § 12, p. 135; R.S.1913, § 998; C.S.1922, § 900; C.S.1929, § 26-214; R.S.1943, § 23-214; Laws 1957, c. 62, § 1, p. 281; Laws 1969, c. 153, § 1, p. 719; Laws 1973, LB 75, § 2.

23-215 Town clerk and treasurer; qualifications; bond.

The county board shall on or before the third Tuesday in December following the adoption of township organization, appoint for each township one town clerk and one treasurer who are qualified electors residing in the township. Such persons so appointed shall on or before the first Tuesday in January next ensuing take the oath of office and give bond as provided by law. The county board shall approve such bonds at its January meeting or shall meet and approve all bonds given to fill vacancies provided for in this section and section 23-214 before the first day of April next ensuing. In the event the persons appointed shall fail or refuse to qualify by the time named above, the county board shall name some other person or persons possessing the qualifications mentioned in this section. The persons so appointed shall qualify and hold their offices for the term.

Source: Laws 1895, c. 28, § 13, p. 135; R.S.1913, § 999; C.S.1922, § 901; C.S.1929, § 26-215; R.S.1943, § 23-215; Laws 1973, LB 75, § 3.

23-216 Repealed. Laws 1973, LB 75, § 20.

23-217 Repealed. Laws 1973, LB 75, § 20.

23-218 Repealed. Laws 1973, LB 75, § 20.

23-219 Town; corporate name.

The corporate name of each town shall be the town of (name of town), and all acts done by the town and all actions by or against the town shall be in its corporate name.

Source: Laws 1895, c. 28, § 17, p. 136; R.S.1913, § 1003; C.S.1922, § 905; C.S.1929, § 26-219.

All actions by or against a town are required to be in its corporate name. Town of Denver v. Myers, 63 Neb. 107, 88 N.W. 191 (1901).

23-220 Repealed. Laws 1973, LB 75, § 20.

23-221 Repealed. Laws 1973, LB 75, § 20.

23-222 Township officers; when elected; qualifications.

The officers of the township board shall be elected pursuant to the Election Act at the next general election held in November following appointment and shall have the qualifications required by sections 23-214 and 23-215.

Source: Laws 1895, c. 28, § 20, p. 137; R.S.1913, § 1006; C.S.1922, § 908; C.S.1929, § 26-222; R.S.1943, § 23-222; Laws 1994, LB 76, § 538; Laws 1997, LB 764, § 6; Laws 2003, LB 461, § 1.

Cross References

Election Act, see section 32-101.

Road overseer is officer of township. Town of Denver v. Myers, 63 Neb. 107, 88 N.W. 191 (1901).

23-222.01 Repealed. Laws 1994, LB 76, § 615.

23-223 Towns; corporate powers.

Every town shall have corporate capacity to exercise the powers granted thereto, or necessarily implied, and no others. It shall have the power (1) to sue and be sued; (2) to acquire, by purchase, gift, or devise, and to hold property, both real and personal, for the use of its inhabitants, and to sell and convey the same; and (3) to make all such contracts as may be necessary in the exercise of the powers of the town. In exercising the powers of the township, it may enter into compacts with another township or townships to purchase and jointly own road equipment.

Source: Laws 1895, c. 28, § 21, p. 137; R.S.1913, § 1007; C.S.1922, § 909; C.S.1929, § 26-223; R.S.1943, § 23-223; Laws 1955, c. 66, § 1, p. 217.

Township is given power to direct the raising of money by taxation for the construction and repairing of roads within the township, and to make contracts necessary to the exercise of such power. State v. Bone Creek Township, 109 Neb. 202, 190 N.W. 586 (1922).

Township is not liable for personal injuries by reason of defective road. Wilson v. Ulysses Township, 72 Neb. 807, 101 N.W. 986 (1904).

In counties under township organization, duty to keep ordinary township highways and culverts in repair is imposed on township. Goes v. Gage County, 67 Neb. 616, 93 N.W. 923 (1903).

23-224 Annual town meeting; powers of electors present.

The electors present at the annual town meeting shall have power:

(1) To make all orders for sale, conveyance, regulation, or use of the corporate property of the town that may be deemed to be conducive to the interests of the inhabitants;

(2) To take all necessary measures and give directions for the exercise of their corporate powers;

(3) To provide for the institution, defense, or disposition of suits at law or in equity in which the town is interested;

(4) To take such action as shall induce the planting and cultivation of trees along the highways in such towns and to protect and preserve trees standing along or on highways;

(5) To construct and keep in repair public wells and to regulate the use thereof;

(6) To prevent the exposure or deposit of offensive or injurious substances within the limits of the town;

(7) To make such bylaws, rules, and regulations as may be deemed necessary to carry into effect the powers herein granted and to impose such fines and penalties, not exceeding twenty dollars for one offense, as shall be deemed proper, except when a fine or penalty is already allowed by law, which fine or penalty shall be imposed by the county court;

(8) To direct the raising of money by taxation, subject to approval by the county board, (a) for constructing and repairing roads and bridges within the town to the extent allowed by law; (b) for the prosecution or defense of suits by or against the town or in which it is interested; (c) for any other purpose required by law; (d) for the purpose of building or repairing bridges over streams dividing the town from any other town; (e) for the compensation of town officers at the rate allowed by law and, when no rate is fixed for such amount, as the electors may direct; and (f) for the care and maintenance of abandoned or neglected cemeteries within the town, except that the town board shall not expend more than one hundred dollars in any one year for such purposes. When any county discontinues township organization, the county shall care for and maintain such abandoned or neglected cemeteries;

(9) To guard against the destruction of property in the town by prairie fire;

(10) To restrain, regulate, or prohibit the running at large of cattle, horses, mules, asses, swine, sheep, and goats and determine when such animals may go at large, if at all. All votes thereon shall be by ballot;

(11) To authorize the distraining, impounding, and sale of cattle, horses, mules, asses, sheep, goats, and swine for penalties incurred and costs of proceedings. The owner of such animals shall have the right to redeem the same from the purchaser thereof at any time within one month from the day of sale by paying the amount of the purchaser's bid, with reasonable costs for their keeping and interest at the rate of seven percent per annum;

(12) To purchase, hold, plat, improve, and maintain grounds for cemetery purposes; to sell and convey lots in such cemeteries for the burial of the dead and to contract with the purchaser to perpetually care for and keep in order the lots so sold; and to elect trustees who shall have power to manage such

cemetery under such bylaws as the electors of the township at the annual town meeting shall from time to time adopt. When any county discontinues township organization, the county shall care for and maintain such abandoned or neglected cemeteries; and

(13) To hold an election or town meeting to exceed the levy limits established by section 77-3443.

Source: Laws 1895, c. 28, § 22, p. 137; Laws 1903, c. 36, § 1, p. 285; R.S.1913, § 1008; Laws 1919, c. 60, § 1, p. 166; C.S.1922, § 910; Laws 1927, c. 58, § 1, p. 218; C.S.1929, § 26-224; R.S.1943, § 23-224; Laws 1967, c. 120, § 1, p. 382; Laws 1972, LB 1032, § 111; Laws 1996, LB 1114, § 39.

County may appropriate money for portion of state road through township. State v. Bone Creek Township, 109 Neb. 202, 190 N.W. 586 (1922).

In counties under township organization where no poorhouse has been established, the duty of supporting the poor devolves upon the townships. Custer Township v. Board of Supervisors of Antelope County, 103 Neb. 128, 170 N.W. 600 (1919).

Township, expending money for board and hospital fees, cannot recover same from county. Newark Township v. Kearney County, 99 Neb. 142, 155 N.W. 797 (1915).

County having no poorhouse is liable to another county for care of its poor. Rock County v. Holt County, 78 Neb. 616, 111 N.W. 366 (1907).

In counties under township organization, duty to keep ordinary township highways and culverts in repair is imposed on township. Goes v. Gage County, 67 Neb. 616, 93 N.W. 923 (1903).

Township is not liable for support of poor unless county has not established a poorhouse. Town of Clearwater v. Town of Garfield, 65 Neb. 697, 91 N.W. 496 (1902).

Townships are liable for support of pauper only when made so by statute. Gilligan v. Town of Grattan, 63 Neb. 242, 88 N.W. 477 (1901).

Town is liable on supervisor's contract to support poor whether levy is made or not. Waltham v. Town of Mullally, 27 Neb. 483, 43 N.W. 252 (1889).

23-225 Town; failure to organize; officers; how appointed.

In case any town in any county wherein township organization may be adopted, shall refuse or neglect to organize and elect town officers at the time fixed by law, it shall be the duty of the county board, upon the affidavit of any freeholder resident of said town, filed in the office of the county clerk, setting forth the facts, to proceed at any regular or special meeting of the board and appoint necessary town officers for such town, and the persons so appointed shall hold their respective offices until others are chosen or appointed in their places, and shall have the same power and be subject to the same duties and penalties as if they had been duly chosen by the electors of the town.

Source: Laws 1895, c. 28, § 23, p. 139; R.S.1913, § 1009; C.S.1922, § 911; C.S.1929, § 26-225.

23-226 Town officers; failure to qualify; effect.

Whenever it shall be made to appear to the county board that the town officers appointed by them or by any preceding board, as provided in section 23-225, have failed to qualify as required by law, so that such town cannot become organized, the board may annex such town to any adjoining town, and the same town so annexed shall thereafter form and constitute a part of such adjoining town.

Source: Laws 1895, c. 28, § 24, p. 139; R.S.1913, § 1010; C.S.1922, § 912; C.S.1929, § 26-226.

23-227 Annual town meetings; notice; publication.

The citizens of the several towns of this state, qualified by the Constitution of Nebraska to vote at general elections, shall assemble and hold annual town meetings at their respective towns at the time of the budget hearing as provided by the Nebraska Budget Act. Notice of the time and the place of holding such

meeting, after the first meeting, shall be given by the town clerk by publishing the notice in a newspaper in or of general circulation in the town at least ten days prior to the meeting.

Source: Laws 1895, c. 28, § 25, p. 139; Laws 1909, c. 37, § 1, p. 222; R.S.1913, § 1011; C.S.1922, § 913; Laws 1923, c. 139, § 1, p. 341; Laws 1927, c. 54, § 1, p. 209; C.S.1929, § 26-227; R.S.1943, § 23-227; Laws 1963, c. 112, § 1, p. 441; Laws 1973, LB 75, § 4; Laws 1992, LB 1063, § 15; Laws 1992, Second Spec. Sess., LB 1, § 15.

Cross References

Nebraska Budget Act, see section 13-501.

23-228 Annual town meeting; additional powers of electors.

The electors of each town shall have power at their annual town meetings to elect such town officers as may be required to be chosen to direct the institution and defense of suits at law or equity in which such town may be a party in interest; to direct such sum to be raised in such town for the support and maintenance of roads and bridges, or for any other purpose provided by law as they deem necessary; to take measures and give directions for the exercise of their corporate powers; to impose penalties upon persons offending against any such regulations; and to make rules, regulations, and bylaws necessary to carry into effect the powers herein granted.

Source: Laws 1895, c. 28, § 26, p. 140; R.S.1913, § 1012; C.S.1922, § 914; C.S.1929, § 26-228.

Township is given power to direct the raising of money by taxation for the construction and repairing of roads within the township, and to make contracts necessary to the exercise of such power. State v. Bone Creek Township, 109 Neb. 202, 190 N.W. 586 (1922).

In counties under township organization, duty to keep ordinary township highways and culverts in repair is imposed on townships. Goes v. Gage County, 67 Neb. 616, 93 N.W. 923 (1903).

23-229 Town bylaws and regulations; publication.

It shall be the duty of the town clerk to cause all bylaws, rules, and regulations of the town, within twenty days after their adoption, to be published by posting in three public places in the town or by one insertion in any newspaper published in the county; but all such bylaws, rules, and regulations shall take effect and be in force from the date of their adoption, unless otherwise directed by the electors of the town.

Source: Laws 1895, c. 28, § 27, p. 140; R.S.1913, § 1013; C.S.1922, § 915; C.S.1929, § 26-229.

23-230 Special town meetings; how called; notice; place; quorum.

A town meeting shall be held when the town treasurer, town clerk, and the chairman of the board or any two of them together with at least twelve freeholders of the town, shall in writing file in the office of the town clerk a statement that a special meeting is necessary in the best interests of the town setting forth the object of the meeting. The town clerk or, in his absence, the town treasurer shall post notices in five of the most public places of the town giving at least ten days' notice of such special meeting. It shall set forth the objects of the meeting as contained in the statement filed as aforesaid. The place of holding special town meetings shall be at the place where the last annual town meeting was held, but in case such place may be found inconven-

ient, the meeting may adjourn to the nearest convenient place; *Provided,* not less than one-third of the electors of a town shall constitute a quorum for the transaction of business at any special town meeting.

Source: Laws 1895, c. 28, § 28, p. 140; R.S.1913, § 1014; C.S.1922, § 916; C.S.1929, § 26-230; R.S.1943, § 23-230; Laws 1957, c. 62, § 2, p. 281; Laws 1972, LB 1032, § 112.

23-231 Special town meeting; powers of electors enumerated.

The electors at special town meetings, when properly convened, shall have full power to fill any vacancies in any of the town offices when the same shall not already have been filled by appointment; to provide for raising money for repairing highways or buildings, or repairing bridges in case of emergency, and to direct the repairing or building thereof; to act upon any subject within the power of the electors at any annual town meeting which was postponed at the preceding annual town meeting for want of time, to be considered at a future special town meeting; but special town meetings shall have no power to act upon any subject not embraced in the statement of the notice calling the same.

Source: Laws 1895, c. 28, § 29, p. 141; R.S.1913, § 1015; C.S.1922, § 917; C.S.1929, § 26-231.

23-232 Repealed. Laws 1973, LB 75, § 20.

23-233 Repealed. Laws 1973, LB 75, § 20.

23-234 Town meeting; minutes; duty of town clerk; duty of town treasurer.

The town clerk elected or appointed shall be the clerk of the town meeting, and shall keep faithfully minutes of its proceedings, in which he shall enter at length every order or direction, and all rules and regulations made by such meeting. If the town clerk is absent from the town meeting, the town treasurer shall perform the duties of the town clerk. The person keeping the minutes shall sign the same.

Source: Laws 1895, c. 28, § 32, p. 142; R.S.1913, § 1018; C.S.1922, § 920; C.S.1929, § 26-234; R.S.1943, § 23-234; Laws 1973, LB 75, § 5.

23-235 Repealed. Laws 1973, LB 75, § 20.

23-236 Town meeting; questions; vote required.

All questions upon motions made at town meetings shall be determined by a majority of the electors voting, and the presiding officer shall ascertain and declare the result of the votes upon each question.

Source: Laws 1895, c. 28, § 34, p. 142; R.S.1913, § 1020; C.S.1922, § 922; C.S.1929, § 26-236.

23-237 Town meeting; manner of voting.

When the result of any vote shall, upon such declaration, be questioned by one or more of the electors present, the presiding officer shall make the vote certain by causing the voters to rise and be counted, or by dividing off.

Source: Laws 1895, c. 28, § 35, p. 142; R.S.1913, § 1021; C.S.1922, § 923; C.S.1929, § 26-237; R.S.1943, § 23-237; Laws 1973, LB 75, § 6.

23-238 Town meeting; qualifications of electors.

No person shall be a voter at any town meeting unless he shall be a registered voter, and a resident of the town wherein he shall offer to vote.

Source: Laws 1895, c. 28, § 36, p. 142; R.S.1913, § 1022; C.S.1922, § 924; C.S.1929, § 26-238; R.S.1943, § 23-238; Laws 1973, LB 75, § 7.

23-239 Town meeting; voters; challenges; laws applicable.

If any person offering to vote at any election, or upon any question arising at such town meeting, shall be challenged as an unqualified voter, the presiding officer shall proceed thereupon in like manner as the judges of general elections are required to do, adapting the oath to the circumstances of the town meeting, and the laws in force in regard to false swearing and illegal voting at general elections shall apply to false swearing and illegal voting at town meetings.

Source: Laws 1895, c. 28, § 37, p. 142; R.S.1913, § 1023; C.S.1922, § 925; C.S.1929, § 26-239.

Cross References

Challenge to voter, see sections 32-926 to 32-932.
Penalties for false swearing and illegal voting, see section 32-1530.

23-240 Repealed. Laws 1973, LB 75, § 20.

23-241 Town meeting; minutes; filing.

The minutes of the proceedings of every town meeting shall be filed in the office of the town clerk within ten days after such town meeting.

Source: Laws 1895, c. 28, § 39, p. 143; R.S.1913, § 1025; C.S.1922, § 927; C.S.1929, § 26-241; R.S.1943, § 23-241; Laws 1973, LB 75, § 8.

23-242 Town officers; oath; certificate; filing.

Every person elected or appointed to the office of town clerk, town treasurer, or town chairman, before he enters upon the duties of his office, and within ten days after he shall be notified of his election or appointment, shall take and subscribe before some authorized person an oath or affirmation to faithfully and impartially perform the duties of his office, as prescribed by law, and shall cause a certificate of the same to be filed in the office of the town clerk.

Source: Laws 1895, c. 28, § 40, p. 143; R.S.1913, § 1026; C.S.1922, § 928; C.S.1929, § 26-242; R.S.1943, § 23-242; Laws 1957, c. 62, § 3, p. 281; Laws 1973, LB 75, § 9.

Statute is applicable to road overseer and neglect of road overseer to comply herewith may be deemed refusal by him to serve in that capacity. State ex rel. Luckey v. Weber, 124 Neb. 84, 245 N.W. 407 (1932).

23-243 Town officers; oath; failure to take; effect.

If any person chosen or appointed to any town office shall neglect to take or subscribe such oath, and cause a certificate thereof to be filed as above required, such neglect shall be deemed to be a refusal to serve.

Source: Laws 1895, c. 28, § 41, p. 143; R.S.1913, § 1027; C.S.1922, § 929; C.S.1929, § 26-243.

Neglect of road overseer to comply with this section may be deemed refusal by him to serve in that capacity. State ex rel. Luckey v. Weber, 124 Neb. 84, 245 N.W. 407 (1932).

23-244 Repealed. Laws 1973, LB 75, § 20.

23-245 Town officer; retirement; records; transfer.

It shall be the duty of every person retiring from a town office to deliver to his successor in office all the records, books, papers, money, and property belonging to such office held by him.

Source: Laws 1895, c. 28, § 43, p. 143; R.S.1913, § 1029; C.S.1922, § 931; C.S.1929, § 26-245.

Every person retiring from town office is required to deliver the records and property of his office to his successor. Town of Denver v. Myers, 63 Neb. 107, 88 N.W. 191 (1901).

23-246 Town treasurer; bond; amount; forfeiture; right of action.

The town treasurer of each town shall give bond to the town in the sum of two thousand dollars, or double the amount of money that may come into his hands, to be fixed by the town board. Whenever it shall be ascertained that such bond has been forfeited, suit in the name of such town on said bond may be brought by any resident freeholder of such town.

Source: Laws 1895, c. 28, § 44, p. 143; R.S.1913, § 1030; C.S.1922, § 932; C.S.1929, § 26-246.

23-246.01 Town treasurer; funds; depository.

All township funds withdrawn from the county treasury, or collected directly by township officers, shall be deposited within ten days in depositories approved for the deposit of county funds of such county in an account in the name of the township.

Source: Laws 1951, c. 49, § 1, p. 166.

23-247 Town clerk; duties; penalties, recovery of.

The town clerk shall prosecute in the name of his town, or otherwise as may be necessary, for all penalties given by law to such town or for its use, and for which no other officer is specially directed to prosecute; and he shall receive all accounts which may be presented to him against the town.

Source: Laws 1895, c. 28, § 45, p. 144; R.S.1913, § 1031; C.S.1922, § 933; C.S.1929, § 26-247.

23-248 Poor relief; duty of county board.

In all counties the care of the poor shall be under the charge of the county board as provided by law.

Source: Laws 1895, c. 28, § 46, p. 144; R.S.1913, § 1032; Laws 1915, c. 20, § 1, p. 80; C.S.1922, § 934; C.S.1929, § 26-248.

In counties under township organization, support of poor devolves upon townships. Custer Township v. Board of Supervisors of Antelope County, 103 Neb. 128, 170 N.W. 600 (1919).

23-249 Town clerk; duties and powers; records; papers; oaths.

The town clerk of each town in this state shall have the custody of all records, books and papers of the town, and shall file all certificates of oaths and other

papers required by law to be filed in his office. He shall have power to administer the oath of office to all town officers and it is hereby made the duty of the town clerk to administer all oaths which may be required in the transaction of any township business in the town where he may be clerk; *Provided,* nothing herein shall be so construed as to deprive any other person qualified by law from administering said oaths.

Source: Laws 1895, c. 28, § 47, p. 144; R.S.1913, § 1033; C.S.1922, § 935; C.S.1929, § 26-249.

23-250 Town clerk; budget; prepare.

The town clerk in counties under township organization shall proceed to prepare the township budget as prescribed in the Nebraska Budget Act.

Source: Laws 1913, c. 54, § 1, p. 160; R.S.1913, § 1034; C.S.1922, § 936; C.S.1929, § 26-250; R.S.1943, § 23-250; Laws 1951, c. 49, § 2, p. 166; Laws 1953, c. 52, § 1, p. 180; Laws 1973, LB 75, § 10; Laws 1992, LB 1063, § 16; Laws 1992, Second Spec. Sess., LB 1, § 16; Laws 2002, LB 568, § 8.

Cross References

Nebraska Budget Act, see section 13-501.

23-250.01 Repealed. Laws 1999, LB 86, § 17.

23-251 Town clerk; duties; proceedings to raise money; certificate to county clerk.

The town clerk shall, within ten days after any township meeting at which any action was had for raising money, deliver to the county clerk a certified copy or copies of all entries of votes for the raising of such money, and it shall be the duty of the county clerk to lay all such matters before the county board at their next meeting.

Source: Laws 1895, c. 28, § 49, p. 144; R.S.1913, § 1035; C.S.1922, § 937; C.S.1929, § 26-251.

23-252 Town board; accounts and claims; audit; annual statement.

In each town, the clerk, the treasurer, and the chairperson of the board shall examine the accounts of the overseers of highways for money received and disbursed by them and shall require all officers to account to such board for any and all such money received and disbursed by such officers in their official capacity. Such board shall examine and audit all charges and claims against the town and the compensation of all town officers. In case of the absence of any of such officers or their failure to attend any meeting of the board, the two attending may appoint any qualified elector to act with them in the place of the absentee, and the appointee shall act, only for such meeting, in the place of such absentee as a member of such board. Each township shall make an annual budget statement as set out in the Nebraska Budget Act. At its expense, the county board may require an audit of the accounts of any township within the county, whenever in its judgment such audit is necessary. The county board may contract with the Auditor of Public Accounts or select a licensed public accountant or certified public accountant or firm of such accountants to

conduct the audit. The original copy of the audit shall be filed in the office of the Auditor of Public Accounts.

Source: Laws 1895, c. 28, § 51, p. 145; Laws 1913, c. 54, § 2, p. 161; R.S.1913, § 1036; C.S.1922, § 938; C.S.1929, § 26-252; R.S. 1943, § 23-252; Laws 1951, c. 49, § 4, p. 167; Laws 1969, c. 153, § 3, p. 720; Laws 1973, LB 75, § 11; Laws 1985, Second Spec. Sess., LB 29, § 1; Laws 1987, LB 183, § 1.

Cross References

Nebraska Budget Act, see section 13-501.

23-253 Accounts; audit; meetings; notice.

The board shall meet at the town clerk's office or other convenient place for the purpose of examining and auditing the town accounts in each fiscal year at such times as the interest of the town may require. Notices of such meetings shall be published once at least ten days before such meeting in a legal newspaper of general circulation in the county.

Source: Laws 1895, c. 28, § 52, p. 145; Laws 1913, c. 257, § 1, p. 791; R.S.1913, § 1037; C.S.1922, § 939; Laws 1923, c. 139, § 3, p. 342; C.S.1929, § 26-253; R.S.1943, § 23-253; Laws 1965, c. 97, § 2, p. 416; Laws 1965, c. 98, § 1, p. 417; Laws 1973, LB 75, § 12.

23-254 Accounts; filing; production at town meeting.

The accounts so audited, and those rejected, if any, shall be delivered with the certificates of the auditors, or a majority of them, to the town clerk, to be by him kept on file for the inspection of all persons. They shall also be produced by the town clerk at the next annual town meeting, and shall be there publicly read by him.

Source: Laws 1895, c. 28, § 53, p. 145; R.S.1913, § 1038; C.S.1922, § 940; C.S.1929, § 26-254.

23-255 Town funds; disbursement; orders; warrants; limitations; registration of warrants.

The town clerk shall draw and sign all orders upon the town treasurer for all money to be disbursed by the township, and all warrants upon the county treasurer for money raised for town purposes, or apportioned to the town by the county or state, and present the same to the chairman of the board, to be countersigned by him, and no warrant shall be paid until so countersigned. No warrant shall be countersigned by the chairman of the board until the amount for which the warrant is drawn is written upon its face. The clerk and chairman of the board shall keep a record in separate books furnished by the county, of the amount, date, purpose for which drawn, and name of person to whom issued, of each warrant signed or countersigned by them. All claims and charges against the town, duly audited and allowed by the town board, shall be paid by order so drawn. No order shall be drawn on the town treasurer in excess of seventy-five percent of the amount of taxes levied for the current year on the property of said town, subject to be expended by said town, unless the money is in the treasury of said town to pay the order so drawn on presentation. When any order drawn as aforesaid is presented to the town treasurer for

payment, and is not paid for want of funds, the town treasurer shall endorse on said order presented and not paid for want of funds, and shall note in a book of registration, to be kept for that purpose, the fact of the presentation and nonpayment of said order; and said order shall draw interest at six percent per annum from the date of presentation until there are sufficient funds in the hands of said treasurer to pay the same, after paying all orders drawn against such tax levy presented prior thereto, and said orders shall be paid in the order of their presentation and registration. The money received by the town treasurer as the tax levied in any year shall be applied first in payment of the orders drawn against said levy; and such levy shall be deemed specifically appropriated, so far as the same may be lawfully expended by said town, to the payment of orders drawn against said levy.

Source: Laws 1895, c. 28, § 54, p. 146; Laws 1913, c. 54, § 2, p. 161; R.S.1913, § 1039; C.S.1922, § 941; C.S.1929, § 26-255; R.S. 1943, § 23-255; Laws 1969, c. 153, § 4, p. 721.

23-256 Repealed. Laws 1973, LB 75, § 20.

23-257 Claims; certified statement; delivered to town clerk.

The board shall make a certificate to be signed by a majority of its members specifying the value of the claim and to whom the amount is allowed, and shall cause such certificate to be delivered to the town clerk of said town, to be by him kept on file for the inspection of all persons.

Source: Laws 1895, c. 28, § 56, p. 147; R.S.1913, § 1041; C.S.1922, § 943; C.S.1929, § 26-257; R.S.1943, § 23-257; Laws 1973, LB 75, § 13.

23-258 Town funds; general expenditures authorized.

The following shall be deemed town charges: The compensation of town officers for services rendered their respective towns, contingent expenses necessarily incurred for the use and benefit of the town, the money authorized by the vote of the town meeting for any town purposes, and every sum directed by law to be raised for town purposes.

Source: Laws 1895, c. 28, § 57, p. 147; R.S.1913, § 1042; C.S.1922, § 944; C.S.1929, § 26-258.

In counties under township organization, duty to keep ordinary township highways and culverts in repair is imposed on township. Goes v. Gage County, 67 Neb. 616, 93 N.W. 923 (1903).

23-259 Tax; amount authorized.

The money necessary to defray the town charges of each town shall be levied on the taxable property in such town in the manner prescribed by the Nebraska Budget Act. The rate of taxes for town purposes shall not exceed twenty-eight cents on each one hundred dollars upon the taxable value of the taxable property in such township for all purposes subject to approval of the county board.

Source: Laws 1895, c. 28, § 58, p. 147; Laws 1905, c. 53, § 1, p. 298; R.S.1913, § 1043; C.S.1922, § 945; Laws 1927, c. 170, § 1, p. 504; C.S.1929, § 26-259; R.S.1943, § 23-259; Laws 1947, c. 65, § 1, p. 214; Laws 1953, c. 52, § 3, p. 181; Laws 1953, c. 287,

§ 40, p. 954; Laws 1957, c. 63, § 1, p. 282; Laws 1973, LB 75, § 14; Laws 1979, LB 187, § 95; Laws 1992, LB 1063, § 17; Laws 1992, Second Spec. Sess., LB 1, § 17; Laws 1996, LB 1114, § 40.

Cross References

Nebraska Budget Act, see section 13-501.

This section provides for certification by the township and levy of taxes for township purposes by the county board. McDonald v. County of Lincoln, 141 Neb. 741, 4 N.W.2d 903 (1942).

23-260 Town board; compensation of officers; fixed by town board.

The members of the town board shall be entitled to a per diem as fixed by the town board at its annual meeting.

Source: Laws 1895, c. 28, §§ 59, 60, p. 148; Laws 1913, c. 54, § 2, p. 162; R.S.1913, § 1044; C.S.1922, § 946; C.S.1929, § 26-260; R.S.1943, § 23-260; Laws 1953, c. 52, § 4, p. 181; Laws 1973, LB 75, § 15.

23-260.01 Repealed. Laws 1959, c. 266, § 1.

23-261 Town officers; official oaths; no fees for administering.

No town officer shall be entitled to any fee or compensation from any individual elected or chosen to a town office for administering to him the oath of office.

Source: Laws 1895, c. 28, § 61, p. 148; R.S.1913, § 1045; C.S.1922, § 947; C.S.1929, § 26-261; R.S.1943, § 23-261; Laws 1969, c. 153, § 5, p. 722.

23-262 Towns; actions by or against; how brought.

When any controversy or cause of action shall exist between any towns of this state, or between any town and individual or corporation, proceedings may be had or suits brought, either at law or in equity, for the purpose of trying and finally settling such controversies. In all such suits and proceedings the town shall sue and be sued by its corporate name, except when town officers shall be authorized by law to sue in their names of office for the benefit of the town.

Source: Laws 1895, c. 28, § 62, p. 148; R.S.1913, § 1046; C.S.1922, § 948; C.S.1929, § 26-262.

Township can maintain an action for a breach of official duty by a road overseer. Town of Denver v. Myers, 63 Neb. 107, 88 N.W. 191 (1901).

23-263 Towns; actions against; service of process; defense.

In all legal proceedings against the town by name, the first process and all other writs or proceedings required to be served shall be served in the manner provided for service of a summons in a civil action, and whenever any suit or proceedings shall be commenced against the town, it shall be the duty of the town clerk to attend to the defense thereof, and lay before the electors of the town, at the first town meeting, a full statement of such suit or proceedings for their consideration and direction.

Source: Laws 1895, c. 28, § 63, p. 149; R.S.1913, § 1047; C.S.1922, § 949; C.S.1929, § 26-263; R.S.1943, § 23-263; Laws 1983, LB 447, § 12.

Cross References

For service of summons in a civil action, see section 25-505.01.

23-264 Towns; judgments against; payment.

All judgments recovered against a town or against town officers, in actions prosecuted by or against them in their names of office, shall not be collected by execution, but shall be a town charge and when levied and collected shall be paid to the person or persons to whom the same shall have been adjudged.

Source: Laws 1895, c. 28, § 64, p. 149; R.S.1913, § 1048; C.S.1922, § 950; C.S.1929, § 26-264.

23-265 County supervisors; meetings; supervision of expenditures; road money, how expended.

The county board shall meet at such times and in such manner as provided by law. Each supervisor shall have special charge of the expenditure of money appropriated out of the county treasury by the board for roads, bridges, and culverts within his district, except in city districts when the board shall direct as to which one of the supervisors shall supervise the expenditure of the money appropriated as aforesaid. Said money so appropriated shall not include any money paid as automobile or motor vehicle registration or license fees and shall not be distributed by said board to the individual members thereof to be by them personally paid out upon their own private account nor in any manner whatever; but shall remain in the county treasury until a claim or claims for labor performed shall be properly verified, approved by said supervisor, filed with the county clerk, allowed by the county board, and a warrant drawn therefor.

Source: Laws 1895, c. 28, § 65, p. 149; R.S.1913, § 1049; C.S.1922, § 951; Laws 1923, c. 44, § 1, p. 159; C.S.1929, § 26-265; R.S. 1943, § 23-265; Laws 1963, c. 113, § 1, p. 442.

Payment to member of county board for directing road work must be out of district road fund, excluding motor vehicle registration or license fees. State ex rel. Maltman v. Adams County, 119 Neb. 826, 231 N.W. 29 (1930).

Townships must keep highways, culverts, etc., in repair. Goes v. Gage County, 67 Neb. 616, 93 N.W. 923 (1903).

23-266 Towns; meetings; provisions inapplicable to cities.

None of the provisions of sections 23-201 to 23-299, with respect to the meetings of electors of their respective towns and their powers, shall apply to towns whose limits are coextensive with cities of the primary, first and second class, but such cities, and the inhabitants thereof, shall continue to be governed by the laws specially applicable thereto, except that the inhabitants thereof shall have such power as is conferred by law or election in the choosing of supervisors, assessors, judges and clerks of election, and other county officers.

Source: Laws 1895, c. 28, § 66, p. 150; R.S.1913, § 1050; C.S.1922, § 952; C.S.1929, § 26-266.

23-267 Supervisor districts; population as basis for division; how calculated.

For the purpose of ascertaining the number of inhabitants in the several districts provided by section 23-204, the supervisors or commissioners, as the case may be, shall ascertain the whole number of votes cast at the last preceding general election held within the county, and shall multiply the number of votes so cast by five. This result shall be taken as the whole number

of inhabitants of the county or any part thereof as the case may be, and the supervisor districts shall be divided upon the foregoing basis and in accordance with the results thus obtained.

Source: Laws 1895, c. 28, § 71, p. 153; R.S.1913, § 1051; C.S.1922, § 953; C.S.1929, § 26-267.

Legislature did not confine inhabitants or population to legal residents or voters. Ludwig v. Board of County Commissioners of Sarpy County, 170 Neb. 600, 103 N.W.2d 838 (1960).

23-268 County supervisors; election; ballots; residency.

County supervisors shall be elected as provided in section 32-529. Elections shall be conducted as provided in the Election Act. In city districts, the ballots shall state which one of the supervisors is elected for the odd-numbered district and which one for the even-numbered district.

A supervisor elected after November 1986 need not be a resident of the district when he or she files for election as a supervisor from a given district, but a supervisor shall reside in the district in which he or she holds office.

Source: Laws 1895, c. 28, § 69, p. 152; R.S.1913, § 1052; C.S.1922, § 954; C.S.1929, § 26-268; R.S.1943, § 23-268; Laws 1947, c. 64, § 7, p. 212; Laws 1986, LB 812, § 1; Laws 1994, LB 76, § 539.

Cross References

Election Act, see section 32-101.

County supervisors are elected for four years, but have staggered terms of office. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

23-269 County supervisor districts; boundaries; change.

The supervisor districts may be changed after each state and federal census if it appears from an examination that the population has become unequal among the several districts. In the event of any change or amendment of sections 23-201 to 23-299 which may necessitate a change in the boundaries of such supervisor districts or any one of them, the county board shall make such change in boundary at its next regular meeting after such change or amendment takes effect. Those counties under township organization may change their procedures for electing members to their governing board from district to at large or from at large to district following the provisions of section 32-554.

Source: Laws 1895, c. 28, § 72, p. 153; R.S.1913, § 1053; Laws 1917, c. 17, § 3, p. 82; C.S.1922, § 955; C.S.1929, § 26-269; R.S.1943, § 23-269; Laws 1973, LB 552, § 4; Laws 1991, LB 789, § 9; Laws 1994, LB 76, § 540.

Where census indicated supervisory districts unequal as to population, mandatory duty was imposed upon board of supervisors to redistrict county. State ex rel. Rowe v. Emanuel, 142 Neb. 583, 7 N.W.2d 156 (1942).

After election adopting township organization, the county judge, county clerk, and county treasurer must divide the county into supervisor districts under rules in this section, but redistricting when required must be done under same rules by the county board. Obermiller v. Siegel, 340 F.Supp. 208 (D. Neb. 1972).

23-270 County board; duties; how determined.

In the absence of any special provision governing the board of supervisors, such board shall be governed by and perform all the duties and have all the

powers applicable to county boards as provided by the general laws of this state.

Source: Laws 1895, c. 28, § 73, p. 153; R.S.1913, § 1054; C.S.1922, § 956; C.S.1929, § 26-270.

In a county under township organization, the board of supervisors may create new towns. State ex rel. Town of Ewing v. Town of Golden, 99 Neb. 782, 157 N.W. 971 (1916).

23-271 Township organization; adoption; pending business; disposition.

Any incompleted matter or business pending before any board of county commissioners of any county, upon the adoption of township organization by such county, shall be completed and disposed of by the new board the same as if commenced before it.

Source: Laws 1895, c. 28, § 74, p. 153; R.S.1913, § 1055; C.S.1922, § 957; C.S.1929, § 26-271.

(b) COUNTY BOARDS IN COUNTIES UNDER TOWNSHIP ORGANIZATION

23-272 County supervisors; meetings.

The regular meetings of the county board shall be held in January.

Source: Laws 1879, § 64, p. 372; Laws 1889, c. 6, § 1, p. 76; R.S.1913, § 1064; C.S.1922, § 966; C.S.1929, § 26-280; R.S.1943, § 23-272; Laws 1997, LB 40, § 2; Laws 2004, LB 323, § 1.

It would not be presumed that county supervisor-elect qualified until first regular meeting. Kerr v. Adams County, 96 Neb. 178, 147 N.W. 683 (1914).

23-273 County supervisors; special meetings; notice.

Special meetings of the county board shall be held only when requested by at least one-third of the members of the board, which request shall be in writing, addressed to the clerk of the board, and specifying the time and object of such meeting. Upon receipt of such request, the clerk shall immediately notify in writing each member of the board of the time and object of such meeting, and shall cause notice of such meeting to be published in some newspaper of the county, if any shall be published therein; *Provided,* no business shall be transacted at any special meeting except such as is specified in the call.

Source: Laws 1879, § 63, p. 371; R.S.1913, § 1065; C.S.1922, § 967; C.S.1929, § 26-281.

23-274 County supervisors; chairman; duties.

The board at its regular meeting of each year shall organize by choosing one of its number as chairman, who shall preside at all meetings of the board during the year; and in case of his absence at any meeting, the members present shall choose one of their number as temporary chairman.

Source: Laws 1879, § 65, p. 372; R.S.1913, § 1066; C.S.1922, § 968; C.S.1929, § 26-282.

Chairman cannot receive extra salary. Otoe County v. Stroble, 71 Neb. 415, 98 N.W. 1065 (1904).

23-275 County supervisors; certificates of election; where filed.

The supervisors shall severally lay before the board, at the first regular meeting after election, their certificates of election, which shall be examined by the board, and if found regular, shall be filed in the office of the county clerk.

Source: Laws 1879, § 66, p. 372; R.S.1913, § 1067; C.S.1922, § 969; C.S.1929, § 26-283.

County commissioner-elect would not be presumed to have qualified before regular meeting in January. Kerr v. Adams County, 96 Neb. 178, 147 N.W. 683 (1914).

23-276 County supervisors; additional powers.

In addition to the powers hereinbefore conferred upon all county boards, the board of supervisors shall have power (1) to change the boundaries of towns and to create new towns whenever the board determines that the existing towns are not workable towns and (2) to divide the county into convenient voting precincts and, as occasion may require, erect new ones, subdivide precincts already established, and alter voting precinct lines. When a voting precinct has less than seventy-five registered electors, the board of supervisors shall annex such voting precinct to another voting precinct except when the county is divided into more than two legislative districts. Any precinct having two hundred or more square miles and having more than twenty-five electors shall be excluded from being annexed to another voting precinct.

Source: Laws 1879, § 67, p. 372; R.S.1913, § 1068; C.S.1922, § 970; C.S.1929, § 26-284; R.S.1943, § 23-276; Laws 1953, c. 287, § 41, p. 955; Laws 1969, c. 150, § 2, p. 709; Laws 1969, c. 152, § 2, p. 718; Laws 1979, LB 187, § 96; Laws 1992, LB 719A, § 96; Laws 1996, LB 1114, § 41.

In a county under township organization, board of supervisors may create new towns. State ex rel. Town of Ewing v. Town of Golden, 99 Neb. 782, 157 N.W. 971 (1916).

23-277 County supervisors; quorum.

Two-thirds of all the supervisors elected in any county shall constitute a quorum for the transaction of business, and all questions which shall arise at meetings shall be determined by the votes of a majority of the supervisors present, except in cases otherwise provided for.

Source: Laws 1879, § 68, p. 373; R.S.1913, § 1069; C.S.1922, § 971; C.S.1929, § 26-285.

A majority of members present at meeting may change township boundaries. Township of Inavale v. Bailey, 35 Neb. 453, 53 N.W. 465 (1892).

If two-thirds of board are present, impeachment proceedings may be heard. State ex rel. Castor v. Board of Supervisors of Saline County, 18 Neb. 422, 25 N.W. 587 (1885).

23-278 Repealed. Laws 1997, LB 269, § 80.

23-279 County supervisors; oaths; chairman may administer.

The chairman of the board of supervisors shall have power to administer an oath to any person concerning any matter submitted to the board, or connected with their powers and duties.

Source: Laws 1879, § 70, p. 373; R.S.1913, § 1071; C.S.1922, § 973; C.S.1929, § 26-287.

23-280 Repealed. Laws 1973, LB 75, § 20.

23-281 Town; change of name; procedure.

Whenever the county board shall create a new town or change the name of an existing town, the proceedings in giving a name to such new town or changing the name of an existing town, shall be as follows: The proposed name to be given to such new town, or existing town, shall be filed in the office of the Auditor of Public Accounts, there to be retained for at least one year; and the auditor, at any time after the filing of such proposed name, shall, upon application of the board, grant his certificate stating that such proposed name, from information appearing in his office, has not been adopted by any city, town, village or municipal corporation in this state. This certificate must be obtained by the board before any action whatever shall be taken by the board toward making such change of name; and all proceedings instituted in any court or other place, under a name changed, without complying with the provisions of this section, shall be held to be void and of no effect. If such name has been adopted elsewhere in this state, the Auditor of Public Accounts shall so notify the board, whereupon another name shall be filed in his office, which shall there remain in a like manner as hereinbefore provided, and the certificate shall be issued by the auditor immediately after such filing, stating that such name has not been elsewhere adopted; whereupon the board may proceed to make such change of name, and not before. All proceedings pending, and all rights and privileges acquired in the name of such town, by such town, or by any person residing therein, shall be secured to such town or person, and such proceedings continued to final consummation in such name, the same as though the same had not been changed.

Source: Laws 1879, § 72, p. 373; R.S.1913, § 1073; C.S.1922, § 975; C.S.1929, § 26-289.

(c) TOWNSHIP SUPERVISOR SYSTEM

23-282 Repealed. Laws 1975, LB 453, § 61.

23-283 Township supervisor system; petition to adopt; time for filing; election; laws applicable.

The county board, on the petition of two hundred fifty or more registered voters of the county filed with the county clerk or election commissioner at least seventy days prior to the general election, shall cause to be submitted to the voters of the county the question of township supervisors, by ballot to be printed, For township supervisors, or Against township supervisors, the votes to be counted, canvassed, and returned in like manner as votes for county officers.

Source: Laws 1907, c. 40, § 2, p. 177; R.S.1913, § 1075; C.S.1922, § 977; C.S.1929, § 26-291; R.S.1943, § 23-283; Laws 1955, c. 123, § 1, p. 340; Laws 1973, LB 75, § 16.

Cross References

For canvass and return of votes, see Chapter 32, article 10.

23-284 Repealed. Laws 1975, LB 453, § 61.

23-285 Repealed. Laws 1975, LB 453, § 61.

23-286 Repealed. Laws 1975, LB 453, § 61.

23-287 Township supervisor system; discontinuance; election.

Whenever a petition or petitions for a submission of the question of the discontinuance of township supervisors to the voters of his county, signed by a number of electors not less than ten percent of those voting at the last general election, shall be filed in the office of the county clerk or election commissioner not less than seventy days before the date of any general election, it shall be the duty of the county clerk or election commissioner to cause the question to be submitted to the voters of the county at such general election and give notice thereof in the general notice of such election.

Source: Laws 1907, c. 40, § 6, p. 178; R.S.1913, § 1079; C.S.1922, § 981; C.S.1929, § 26-295; R.S.1943, § 23-287; Laws 1973, LB 75, § 17.

23-288 Repealed. Laws 1975, LB 453, § 61.

23-289 Repealed. Laws 1975, LB 453, § 61.

23-290 Township supervisor system; discontinuance; districts.

When the township supervisor system shall cease in any county under township organization, as provided by law, said county shall be divided by the county board into five supervisor districts, as nearly equal as may be in population, one of which districts shall include only the corporate limits of the county seat and the remainder of the county shall be divided into four districts, one of which shall be the northeastern quarter of the county, another the northwestern quarter of the county, another the southwestern quarter of the county, and the other the southeastern quarter of the county.

Source: Laws 1907, c. 40, § 9, p. 178; R.S.1913, § 1082; Laws 1917, c. 19, § 1, p. 84; C.S.1922, § 984; C.S.1929, § 26-298.

23-291 Township supervisor system discontinued; duty of county board.

The county boards in counties discontinuing the township supervisor system shall proceed in like manner, and in the same time and place, as the county commissioners are now required to proceed when township organization is adopted, to reestablish the district system, except that the supervisors residing in each district shall determine by lot which one is to continue as the supervisor from said district. In every other respect said district system shall be reestablished in said counties in like manner as when township organization is adopted.

Source: Laws 1907, c. 40, § 10, p. 178; R.S.1913, § 1083; C.S.1922, § 985; C.S.1929, § 26-299.

(d) DISCONTINUANCE OF TOWNSHIP ORGANIZATION

23-292 Township organization; how discontinued.

Any county which may have adopted or that may hereafter adopt township organization shall discontinue the same whenever the majority of the electors of said county voting on the question of such discontinuance shall so decide in the manner herein provided.

Source: Laws 1885, c. 43, § 1, p. 235; R.S.1913, § 1056; C.S.1922, § 958; C.S.1929, § 26-272.

23-293 Township organization; discontinuance; procedure.

Whenever a petition or petitions for a submission of the question of the discontinuance of township organization to the voters of the county, signed by a number of electors not less than ten percent of those voting at the last general election, or a resolution supported by a majority of the county board is filed in the office of the county clerk or election commissioner not less than seventy days before the date of any general election, the county clerk or election commissioner shall cause such question to be submitted to the voters of the county at such election and give notice of the submission of the question in the general election notices of such election.

Source: Laws 1885, c. 43, § 2, p. 236; Laws 1895, c. 29, § 1, p. 154; R.S.1913, § 1057; C.S.1922, § 959; C.S.1929, § 26-273; R.S. 1943, § 23-293; Laws 1973, LB 75, § 18; Laws 1985, LB 422, § 1.

23-294 Township organization; discontinuance; election; ballot; form.

The forms of ballots shall be respectively, For continuance of township organization, and Against continuance of township organization, and the same shall be written or printed upon the regular ballot cast for officers voted for at such election, and shall be counted and canvassed in the same manner.

Source: Laws 1885, c. 43, § 3, p. 236; R.S.1913, § 1058; C.S.1922, § 960; C.S.1929, § 26-274.

Cross References

For canvass and return of ballots, see Chapter 32, article 10.

23-295 Township organization; discontinuance; when effective.

If it shall appear from the returns of said election that a majority of the votes cast on the question are against the continuance of township organization, then such organization shall cease to exist as soon as a board of county commissioners are appointed and qualified, as hereinafter provided.

Source: Laws 1885, c. 43, § 4, p. 236; R.S.1913, § 1059; C.S.1922, § 961; C.S.1929, § 26-275.

23-296 Township organization; cessation; restoration of commissioner system; districts.

When township organization shall cease in any county, as provided by sections 23-292 to 23-295, the office of county commissioner which became vacant by reason of its adoption is hereby restored, and such county is hereby divided into commissioner districts, with the same boundaries and comprising the same territory as such districts had when township organization was adopted; *Provided,* when such a county votes to have the same number of commissioners as there were supervisors in the county, then the commissioner districts shall be the same districts as the former supervisor districts unless changed at a later date as provided by section 23-149.

Source: Laws 1885, c. 43, § 5, p. 236; R.S.1913, § 1060; C.S.1922, § 962; C.S.1929, § 26-276; R.S.1943, § 23-296; Laws 1945, c. 42, § 2, p. 203.

23-297 Township organization; cessation; commissioner system; temporary organization; districts.

On the first Saturday after the first Tuesday of January following the election at which township organization shall be voted to be discontinued, the county commissioners of such county, for the purpose of temporary organization, shall be appointed by the county clerk, treasurer, and county attorney of such county, unless the counties vote to retain the same persons as the former supervisors, in which event, the commissioner districts shall be the same districts as the former supervisor districts unless changed at a later date as provided by section 23-149. Their successors shall be elected at the next general election in the manner provided by law for the first election of a board of commissioners in any county.

Source: Laws 1885, c. 43, § 6, p. 237; R.S.1913, § 1061; C.S.1922, § 963; C.S.1929, § 26-277; R.S.1943, § 23-297; Laws 1945, c. 42, § 3, p. 203; Laws 1979, LB 331, § 7.

Appointments will not be enjoined on account of irregularities in election, as quo warranto is the proper remedy. Fort v. Thompson, 49 Neb. 772, 69 N.W. 110 (1896).

23-298 Township organization; cessation; commissioners; succeed supervisors.

The board of county commissioners, as herein provided, shall be the legal successor of the board of supervisors in said county. Such board shall thereafter be governed by the laws that shall govern counties not under township organization, and in the same manner that said county would have been governed had not such organization been adopted.

Source: Laws 1885, c. 43, § 7, p. 237; R.S.1913, § 1062; C.S.1922, § 964; C.S.1929, § 26-278; R.S.1943, § 23-298; Laws 1945, c. 42, § 4, p. 204.

23-299 Township organization; cessation; town records, transfer of; indebtedness, unexpended balances; how discharged.

When township organization shall be discontinued in any county, it shall be the duty of the town clerk in each town in said county, as soon as the board of county commissioners are appointed and qualified, to deposit with the county clerk of the county all town records, papers, and documents pertaining to the affairs of such town, and to certify to him the amount of indebtedness of such town outstanding at the time of such discontinuance. The board shall have full and complete power to settle all the unfinished business of the town as fully as might have been done by the town itself, and dispose of any and all property belonging to such town, the proceeds of which, after paying all indebtedness, shall be disposed of by the county board for the benefit of the taxable inhabitants thereof by such board crediting all unexpended balances of said town to the district road fund, and in no other manner. It shall be the duty of such county board, at such time as shall be provided by law, to levy a tax upon the taxable property of such town to pay any unliquidated indebtedness it may have outstanding.

Source: Laws 1885, c. 43, § 8, p. 237; R.S.1913, § 1063; C.S.1922, § 965; C.S.1929, § 26-279; R.S.1943, § 23-299; Laws 1945, c. 42, § 5, p. 204.

ARTICLE 3
PROVISIONS APPLICABLE TO VARIOUS PROJECTS

(a) RESURVEY OF COUNTY

Section
23-301. County resurvey; petition; contents; election.
23-302. County resurvey; election; canvass of votes.
23-303. County resurvey; cost; tax; bonds; submission to voters.

(b) SPECIAL SURVEY OF IRREGULAR TRACTS

23-304. Irregular tracts of land; survey.
23-305. Irregular tracts of land; survey; maps.
23-306. Irregular tracts of land; survey; field notes; record.
23-307. Irregular tracts of land; legal description.

(c) FLOOD CONTROL

23-308. Watercourses; diversion of channel; dams and dikes; when authorized.
23-309. Levees; dikes; construction; when authorized.
23-310. Levees; dikes; petition of landowners; contents; filing.
23-311. Levees; dikes; site; surveys and reports; duty of engineer.
23-312. Levees; dikes; report of engineer; filing; notice of hearing.
23-313. Levees; dikes; petition; remonstrance; hearing; powers of board.
23-314. Levees; dikes; plan for protection; approval by Director-State Engineer.
23-315. Levees; dikes; bids; contracts; conditions.
23-316. Levees; dikes; construction; assessments.
23-317. Levees; dikes; assessments; entry on tax list; lien.
23-318. Levees; dikes; assessments; notice.
23-319. Levees; dikes; bonds; when authorized; term; sinking fund.
23-320. Levees; dikes; assessments; appeal to district court; procedure.
23-320.01. Flood control; powers of county board; contracts with federal government; appropriation of funds.
23-320.02. Flood control; acquisition of lands, rights-of-way, and easements; procedure.
23-320.03. Flood control; bonds; amount; term; levy of tax.
23-320.04. Flood control; liability on indemnity agreements; how paid; insurance.
23-320.05. Flood control; maintenance and operation; coordinated program; tax levy; special fund; establish; use.
23-320.06. Flood control; agreements with other governmental agencies; construction, maintenance, repair, and operation; coordinated program; employment of nonprofit corporation.
23-320.07. Flood control; cities; powers; eminent domain; bonds; tax levy; funds, how used.
23-320.08. Flood control; cooperation with federal government; additional powers; agreements authorized.
23-320.09. Repealed. Laws 1977, LB 510, § 10.
23-320.10. Flood control; construction of works; acquisition of rights-of-way and easements; eminent domain; procedure.
23-320.11. Flood control; acquisition and operation of flood control works; tax levy authorized; repairs.
23-320.12. Flood control; execution of program; parties to agreement; employment of services of nonprofit corporation.
23-320.13. Flood control; cities of the first class; project outside city limits; powers; authority.

(d) COUNTY SUPPLIES

23-321. Repealed. Laws 1985, LB 393, § 18.
23-322. Transferred to section 23-346.01.
23-323. Repealed. Laws 1985, LB 393, § 18.
23-324. Repealed. Laws 1985, LB 393, § 18.
23-324.01. Transferred to section 23-3105.
23-324.02. Transferred to section 23-3106.

Section
23-324.03. Transferred to section 23-3104.
23-324.04. Transferred to section 23-3107.
23-324.05. Repealed. Laws 1985, LB 393, § 18.
23-324.06. Transferred to section 23-3112.
23-324.07. Transferred to section 23-3113.
23-324.08. Transferred to section 23-3114.

(e) REAL ESTATE FOR PUBLIC USE

23-325. Real estate; appropriation; power of county board; procedure.
23-326. Repealed. Laws 1951, c. 101, § 127.
23-327. Repealed. Laws 1951, c. 101, § 127.
23-328. Repealed. Laws 1951, c. 101, § 127.
23-329. Repealed. Laws 1951, c. 101, § 127.
23-330. Repealed. Laws 1955, c. 68, § 1.
23-331. Repealed. Laws 1951, c. 101, § 127.
23-332. Repealed. Laws 1951, c. 101, § 127.

(f) TRANSFER OF SURPLUS FUNDS

23-333. County surplus funds; how transferred; exceptions.
23-334. Repealed. Laws 1949, c. 36, § 1.

(g) EXPLOSIVES

23-335. Repealed. Laws 1988, LB 893, § 18.

(h) AWARDING CONTRACTS

23-336. County contracts; when invalid.
23-337. Illegal contracts; liability of county officers.
23-338. Illegal contracts; county exempt from liability.

(i) STREET IMPROVEMENT

23-339. Street improvement; county aid; when authorized.
23-340. Streets outside corporate limits; improvement; notice to landowners; county aid.
23-341. Streets outside corporate limits; improvement; cost; payment; assessments; determination; how levied.
23-342. Streets outside corporate limits; improvement; contracts; conditions.

(j) MEDICAL FACILITIES

23-343. Transferred to section 23-3501.
23-343.01. Transferred to section 23-3502.
23-343.02. Transferred to section 23-3503.
23-343.03. Transferred to section 23-3504.
23-343.04. Transferred to section 23-3505.
23-343.05. Transferred to section 23-3506.
23-343.06. Transferred to section 23-3507.
23-343.07. Transferred to section 23-3508.
23-343.08. Transferred to section 23-3509.
23-343.09. Repealed. Laws 1987, LB 134, § 9.
23-343.10. Transferred to section 23-3510.
23-343.11. Transferred to section 23-3511.
23-343.12. Transferred to section 23-3512.
23-343.13. Transferred to section 23-3513.
23-343.14. Transferred to section 23-3514.
23-343.15. Transferred to section 23-3515.
23-343.16. Transferred to section 23-3516.
23-343.17. Transferred to section 23-3517.
23-343.18. Transferred to section 23-3518.
23-343.19. Transferred to section 23-3519.
23-343.20. Transferred to section 23-3529.
23-343.21. Transferred to section 23-3530.
23-343.22. Transferred to section 23-3531.
23-343.23. Transferred to section 23-3532.

Section
23-343.24. Transferred to section 23-3533.
23-343.25. Transferred to section 23-3534.
23-343.26. Transferred to section 23-3535.
23-343.27. Transferred to section 23-3536.
23-343.28. Transferred to section 23-3537.
23-343.29. Transferred to section 23-3538.
23-343.30. Transferred to section 23-3539.
23-343.31. Transferred to section 23-3540.
23-343.32. Transferred to section 23-3541.
23-343.33. Transferred to section 23-3542.
23-343.34. Transferred to section 23-3543.
23-343.35. Transferred to section 23-3544.
23-343.36. Transferred to section 23-3545.
23-343.37. Transferred to section 23-3546.
23-343.38. Transferred to section 23-3547.
23-343.39. Transferred to section 23-3548.
23-343.40. Transferred to section 23-3549.
23-343.41. Repealed. Laws 1987, LB 134, § 9.
23-343.42. Transferred to section 23-3550.
23-343.43. Transferred to section 23-3551.
23-343.44. Repealed. Laws 1969, c. 145, § 52.
23-343.45. Repealed. Laws 1987, LB 134, § 9.
23-343.46. Transferred to section 23-3552.
23-343.47. Transferred to section 23-3528.
23-343.48. Transferred to section 23-3553.
23-343.49. Transferred to section 23-3554.
23-343.50. Transferred to section 23-3555.
23-343.51. Transferred to section 23-3556.
23-343.52. Transferred to section 23-3557.
23-343.53. Transferred to section 23-3558.
23-343.54. Transferred to section 23-3559.
23-343.55. Transferred to section 23-3560.
23-343.56. Transferred to section 23-3561.
23-343.57. Transferred to section 23-3562.
23-343.58. Transferred to section 23-3563.
23-343.59. Transferred to section 23-3564.
23-343.60. Transferred to section 23-3565.
23-343.61. Transferred to section 23-3566.
23-343.62. Transferred to section 23-3567.
23-343.63. Transferred to section 23-3568.
23-343.64. Transferred to section 23-3569.
23-343.65. Transferred to section 23-3570.
23-343.66. Transferred to section 23-3571.
23-343.67. Transferred to section 23-3572.
23-343.68. Transferred to section 23-3520.
23-343.69. Transferred to section 23-3521.
23-343.70. Transferred to section 23-3522.
23-343.71. Transferred to section 23-3523.
23-343.72. Transferred to section 23-3524.
23-343.73. Transferred to section 23-3525.
23-343.74. Transferred to section 23-3579.
23-343.75. Transferred to section 23-3580.
23-343.76. Transferred to section 23-3581.
23-343.77. Transferred to section 23-3582.
23-343.78. Transferred to section 23-3583.
23-343.79. Transferred to section 23-3584.
23-343.80. Transferred to section 23-3585.
23-343.81. Repealed. Laws 1985, LB 421, § 6.
23-343.82. Repealed. Laws 1979, LB 412, § 32.
23-343.83. Repealed. Laws 1986, LB 733, § 5.
23-343.84. Transferred to section 23-3586.

(a) RESURVEY OF COUNTY

23-301 County resurvey; petition; contents; election.

Upon petition filed with the county clerk of any county, signed by twenty percent of the qualified voters of said county as shown by the last preceding election and praying the county board to submit the proposition of ordering a resurvey, in whole or in part, of said county for the purpose of reestablishing the original corners of the United States survey, it shall be the duty of the county board to submit to the voters of the county at the next general election, or a special election, the question whether such resurvey shall be ordered; *Provided,* upon a like petition signed by twenty percent of the voters of any township or townships in said county, according to the government survey thereof, praying for the submission of a like proposition to the voters of said township or townships, it shall be the duty of the county board in like manner to submit the question at the next general election, or a special election, whether a resurvey shall be ordered in said township or townships. In every case the petition shall set forth in brief form the extent of the resurvey desired and whether it shall be of the township and county lines, or of the county, township and sectional lines, and an estimate as near as may be by the county surveyor of the probable expense of said resurvey. This statement and estimate shall be placed upon the official ballot with the following words thereafter: For resurvey proposition, and Against resurvey proposition.

Source: Laws 1909, c. 36, § 1, p. 219; Laws 1913, c. 153, § 1, p. 392; R.S.1913, § 1108; C.S.1922, § 1042; C.S.1929, § 26-736.

23-302 County resurvey; election; canvass of votes.

The vote on the proposition shall be canvassed in the same manner as the vote on county officers. If a majority of the votes upon said proposition shall be in favor of the same, the county board shall within thirty days notify the Board of Educational Lands and Funds who shall require such resurvey to be made under its instructions by such competent deputy state surveyor as it shall

appoint, assisted by the county surveyor of the county wherein the work is to be done, and according to the laws governing surveys by the State Surveyor and deputy state surveyors. Such surveys shall be made in accordance with the laws of the United States and the rules and regulations of the United States Department of Interior, Bureau of Land Management, governing the restoration of lost and obliterated corners and the specifications and instructions of the Board of Educational Lands and Funds. The field notes and plats of said resurvey shall be made in the manner and form prescribed by the Bureau of Land Management for the return of field notes and maps of United States surveys, and shall be filed in the office of the county clerk of the county where the work is done and duplicate copies filed in the office of the Board of Educational Lands and Funds at Lincoln, Nebraska, before being paid for; *Provided,* when any integral part of said resurvey is completed upon filing proof of its completion together with plats and field notes for the same approved as provided by law, the county board may allow payment for the part so completed.

Source: Laws 1909, c. 36, § 2, p. 220; R.S.1913, § 1109; Laws 1921, c. 84, § 1, p. 301; C.S.1922, § 1043; C.S.1929, § 26-737; R.S.1943, § 23-302; Laws 1982, LB 127, § 1.

23-303 County resurvey; cost; tax; bonds; submission to voters.

In case the question of said resurvey has been submitted to the voters of the entire county, the cost of said resurvey may be paid out of the county general fund in case there is money there available for that purpose. If not, the cost may be provided for by an issue of bonds or special tax levy, in which case the proposition for bonds or special tax levy shall be submitted to the voters as a part of the resurvey proposition; *Provided,* when a proposition for resurvey has already been submitted to the voters of a county, and a majority have voted in favor of such proposition, it shall be legal for the county board to proceed to make contract for such resurvey in accordance with the provisions of sections 23-301 to 23-303 providing for such contract; *provided further,* in case the question has been submitted to the voters of any one or more governmental townships of any county under the provisions of section 23-301, and a majority have voted in favor of such proposition, the cost of said resurvey may be paid out of the general fund and said fund may be reimbursed the amount of such expenditure by the assessment of a special tax by the county board of such county equally apportioning the cost of such resurvey upon the area of all real estate in such governmental township or townships according to the acreage in each tract as shown by the original United States survey thereof, and including in addition thereto any accreted lands to such original United States survey as may be shown by the resurvey herein provided.

Source: Laws 1909, c. 36, § 3, p. 221; Laws 1913, c. 153, § 1, p. 392; R.S.1913, § 1110; C.S.1922, § 1044; C.S.1929, § 26-738.

(b) SPECIAL SURVEY OF IRREGULAR TRACTS

23-304 Irregular tracts of land; survey.

It shall be the duty of the county board of each organized county in the State of Nebraska to cause to be surveyed, by a competent surveyor, all irregular subdivided tracts or lots of land, other than regular government subdivisions,

and cause the same to be platted on a scale of not less than ten inches to the mile; *Provided, however,* where any county has in its possession the correct field notes of any such tract or lot of land, a new survey shall not be necessary, but such tracts may be mapped from such field notes.

Source: Laws 1879, § 142, p. 390; R.S.1913, § 1084; C.S.1922, § 1009; C.S.1929, § 26-701.

Designation of an irregular tract as a certain numbered tax lot meets all requirements for describing irregular tracts, where plat is prepared and filed hereunder showing descriptions corresponding to the tax lot. City of Scottsbluff v. Kennedy, 141 Neb. 728, 4 N.W.2d 878 (1942).

23-305 Irregular tracts of land; survey; maps.

The board shall cause duplicate maps to be made, on which said tracts or lots of land shall be accurately described by lines and numbered from one up to the highest number of such tracts in each section, which numbers together with the number of the section, town and range, shall be distinctly marked. One of said maps shall be conspicuously hung in the office of the county clerk and the other in the office of the county treasurer.

Source: Laws 1879, § 143, p. 390; R.S.1913, § 1085; C.S.1922, § 1010; C.S.1929, § 26-702.

23-306 Irregular tracts of land; survey; field notes; record.

The board shall also cause to be entered in duplicate, in suitable books to be provided for that purpose, the field notes of all such tracts of land within their respective counties, wherein shall be described each tract according to survey, and each tract shall be therein numbered to correspond with its number on the maps. One of such books of field notes shall be filed in the office of the county clerk, and the other in the office of the county treasurer.

Source: Laws 1879, § 144, p. 390; R.S.1913, § 1086; C.S.1922, § 1011; C.S.1929, § 26-703.

23-307 Irregular tracts of land; legal description.

When the maps and books of field notes shall be filed as hereinbefore provided, the description of any tract or lot of land described in said maps, by number, section, town and range, shall be a sufficient and legal description thereof for revenue and all other purposes.

Source: Laws 1879, § 145, p. 391; R.S.1913, § 1087; C.S.1922, § 1012; C.S.1929, § 26-704.

To prove title to lots numbered for taxation purposes because they are irregular, an owner must present evidence of the survey maps and books of field notes. Vogel v. Bartels, 1 Neb. App. 1113, 510 N.W.2d 529 (1993).

(c) FLOOD CONTROL

23-308 Watercourses; diversion of channel; dams and dikes; when authorized.

Whenever any portion of a county exceeding three hundred and twenty acres in amount is put in peril of destruction by reason of the probable diversion of the channel of any river or watercourse, and whenever a petition stating such fact, signed by twenty freeholders in the precinct, is filed with the county board of such county, it shall be the duty of the county board to view said premises within the succeeding thirty days, and if upon actual view it shall appear that a

portion of the county exceeding three hundred and twenty acres is in actual peril of destruction, it may cause to be built any dam, embankment or dike, or aid to such an extent as it may deem proper in the building of any dam, embankment or dike that it may deem necessary for the protection of said land. The amount expended toward such improvements shall be paid out of the general fund of the county.

Source: Laws 1885, c. 38, § 1, p. 213; R.S.1913, § 1103; C.S.1922, § 1025; C.S.1929, § 26-719.

Cross References

For safety regulations relating to dams and reservoirs, see the Safety of Dams and Reservoirs Act, section 46-1601 et seq.

Where middle of stream is boundary, the line follows any gradual change in course of stream unless change is sudden. Nebraska v. Iowa, 145 U.S. 519 (1892).

23-309 Levees; dikes; construction; when authorized.

The supervisors or board of county commissioners of any county in this state shall have the power, as hereinafter provided, to construct, establish or cause to be constructed and established any levee, dike, bank protection or current control in any river or stream wholly within or bordering on the respective counties, and to provide for the maintenance of the same, whenever such project shall be conducive to the public health, convenience, welfare or safety, which purpose shall or may include the protection of lands or property from overflow, wash or bank erosion.

Source: Laws 1921, c. 269, § 1, p. 893; C.S.1922, § 1026; C.S.1929, § 26-720.

23-310 Levees; dikes; petition of landowners; contents; filing.

Such board of supervisors or county commissioners shall act only upon a written petition signed by the owners of the majority of the land likely to be affected by the proposed levee, dike, bank protection or current control. The petition shall set forth the necessity for the levee, dike, bank protection or current control, a description of its proposed location, and a general statement of the territory likely to be benefited or affected thereby. The petition shall be accompanied by a bond with sufficient surety or sureties to be approved by the county clerk of said county, conditioned to pay all expenses incurred in case the board does not grant the petition. Such petition may be presented at any regular or special meeting of the board and if sufficient in form the board shall order the same to be filed with the county clerk of said county.

Source: Laws 1921, c. 269, § 2, p. 893; C.S.1922, § 1027; C.S.1929, § 26-721.

23-311 Levees; dikes; site; surveys and reports; duty of engineer.

It shall be the duty of such board to act promptly upon all such petitions. Upon the filing of the petition with the county clerk, as provided in section 23-310, the county clerk shall transmit a copy thereof to a competent engineer to be selected by the board, who, together with the board of county commissioners or supervisors, shall, as soon as practicable, inspect the proposed locations. If in the opinion of such board and the engineer such levee, dike, bank protection or current control is necessary or advisable, the board shall cause a survey of the proposed project to be made by such engineer, as herein

provided. Such survey shall be primarily for the purpose of aiding the board in determining the necessity or advisability of constructing such project, but shall be a complete survey such as will be required for assessment of its costs. Such survey may extend to other lands than those affected by the proposed project for the purpose of determining the best practical method of protecting an area greater than the originally proposed territory. For the purpose of inspection or surveys the county commissioners, board of supervisors, surveyors, engineers, or their employees may enter upon any lands within the proposed territory, or upon any lands which in their judgment are likely to be affected by the proposed project. The surveyor or engineer shall file his report with the county clerk as soon as possible after being so instructed by the board to make such survey. The report shall include an estimated cost of the work together with a preliminary apportionment of individual assessments.

Source: Laws 1921, c. 269, § 3, p. 894; C.S.1922, § 1028; C.S.1929, § 26-722.

23-312 Levees; dikes; report of engineer; filing; notice of hearing.

As soon as the report of the engineer is filed with the county clerk, it shall be the duty of the county clerk to give notice of the filing thereof by publication for three consecutive weeks in some weekly newspaper published in the county where the improvement is to be made, and state therein the proposed location where the improvement is to be made and the time set for the hearing thereon, of which all persons interested shall take notice. The date for said hearing shall not be more than six weeks from the date of the first publication

Source: Laws 1921, c. 269, § 4, p. 895; C.S.1922, § 1029; C.S.1929, § 26-723.

23-313 Levees; dikes; petition; remonstrance; hearing; powers of board.

On or before the day fixed for the hearing of such report the owners of any land affected by the work proposed may remonstrate against said petition and report, which remonstrance shall be verified by affidavit. If more than one party remonstrates, the same shall be consolidated and tried together, and the report of the engineer shall be prima facie evidence of the facts therein stated. The supervisors or board of commissioners shall try the issue thus formed, and if they find for the remonstrance, the petition and report shall be dismissed at the cost of the petitioners, or shall be so amended as to comply with the findings of the board, which amended petition and report shall stand as final; *Provided,* that if donations shall be made or secured to the satisfaction of the supervisors or board, sufficient with the assessment to exceed the expenses of the work and damages allowed, if any, the petition and report shall not be dismissed, and such donations are hereby authorized to be made. The board shall have power to permit amendments to be made to the petition or report, and to continue the hearing from time to time, so as to subserve the ends of justice.

Source: Laws 1921, c. 269, § 5, p. 895; C.S.1922, § 1030; C.S.1929, § 26-724.

23-314 Levees; dikes; plan for protection; approval by Director-State Engineer.

If at the time fixed for the hearing of the report, the supervisors or board of commissioners shall find that notice has been given, as required by section 23-312, and further find that the proposed work is of public utility, convenience, welfare or safety, and that the benefits assessed exceed the expenses and damages whatsoever they may be, they shall order that the improvement be made and shall specify therein the nature and extent of the improvement. The report of the engineer as finally adopted by the board shall be designated as the plan for protection and shall be submitted to the Director-State Engineer for his information and approval; *Provided,* that notice of the hour and day of such submission shall be once published in the newspaper selected by the board for other publication notices, at least five days prior thereto. This plan as approved by the Director-State Engineer shall stand as final.

Source: Laws 1921, c. 269, § 6, p. 895; C.S.1922, § 1031; C.S.1929, § 26-725.

23-315 Levees; dikes; bids; contracts; conditions.

(1) If after the hearing the supervisors or board of county commissioners decide to proceed with the improvement, they shall let the contract for the construction of the work as a whole or in parcels as they may deem best. They shall give notice of the time and place the contract or contracts will be let by publishing for three successive weeks in one or more weekly newspapers published in the county, which notice shall state the specifications, nature, and extent of the improvement, the time within which the work is to be completed, and the allotment or allotments to be let. Sealed proposals shall be received and the work let to the lowest and best responsible bidder. Except as provided in subsection (2) of this section, a bond, in form prepared by the supervisors or board of county commissioners, conditioned for the faithful performance of the contract and executed by the bidder and surety or sureties to the county and to all parties interested in the amount of the bid, shall accompany such bid.

(2) If a contract, the provisions of which are limited to the purchase of supplies or materials, is entered into pursuant to this section and if the amount of the contract is fifty thousand dollars or less, an irrevocable letter of credit, a certified check upon a solvent bank, or a performance bond in a guaranty company qualified to do business in Nebraska, as prescribed by and in an amount determined by the county board of supervisors or commissioners, conditioned for the faithful performance of the contract and executed by the bidder to the county and to all parties interested in the amount of the bid, shall accompany the bid.

Source: Laws 1921, c. 269, § 7, p. 896; C.S.1922, § 1032; C.S.1929, § 26-726; R.S.1943, § 23-315; Laws 1987, LB 211, § 1.

23-316 Levees; dikes; construction; assessments.

As soon as the contract or contracts are let for the construction of the work, the supervisors or board of county commissioners shall assess on all the lands benefited ratably in accordance with the benefits received as confirmed and adjudged as herein provided such sum as may be necessary to pay for the work and all costs and expenses accrued or to accrue, not exceeding the whole benefit upon any one tract.

Source: Laws 1921, c. 269, § 8, p. 896; C.S.1922, § 1033; C.S.1929, § 26-727.

23-317 Levees; dikes; assessments; entry on tax list; lien.

The board of supervisors or county commissioners shall thereupon cause the assessment so made upon the lands benefited as aforesaid to be entered upon the tax lists of the county as provided in cases of special assessments, which assessment shall constitute a lien on the real estate respectively assessed and shall be collected as other special assessments are collected; *Provided*, that one-tenth of each assessment shall be collected each year for a period of ten years with interest at the rate of seven percent per annum on deferred payments, unless paid in full as herein provided.

Source: Laws 1921, c. 269, § 9, p. 896; C.S.1922, § 1034; C.S.1929, § 26-728.

23-318 Levees; dikes; assessments; notice.

Within ten days after such work has been completed and approved by the board, the board shall cause a notice to all persons whose lands are benefited by such improvement to be published for three successive weeks in a legal newspaper published and of general circulation in such county or, if no legal newspaper is published in the county, in a legal newspaper of general circulation in the county. Such notice shall fix the time, not more than sixty days from the date of the completion and approval of the work, within which owners of real estate benefited may pay the entire amount assessed against the respective parcels of land benefited and shall state that unless the amount is paid within such time, bonds will be issued for the payment of the special benefits assessed as hereinafter provided.

Source: Laws 1921, c. 269, § 10, p. 897; C.S.1922, § 1035; C.S.1929, § 26-729; R.S.1943, § 23-318; Laws 1986, LB 960, § 19.

23-319 Levees; dikes; bonds; when authorized; term; sinking fund.

After sixty days from the completion and approval of the work it shall be the duty of the county board to issue the bonds of the county in the amount of the assessment remaining unpaid at said time, payable in not to exceed ten equal annual installments with interest on deferred payment at seven percent per annum, and said special assessment and taxes shall constitute a sinking fund for the payment of the bonds and interest.

Source: Laws 1921, c. 269, § 11, p. 897; C.S.1922, § 1036; C.S.1929, § 26-730; R.S.1943, § 23-319; Laws 1947, c. 15, § 14, p. 91.

23-320 Levees; dikes; assessments; appeal to district court; procedure.

Any person who appeared and filed a remonstrance as to the benefits received by him or her through such improvement or as to the amount of his or her assessment before the supervisors or board of commissioners at the hearing as provided in section 23-313 shall be allowed an appeal to the district court of the county by the same procedure as is provided in section 31-412. On such appeal the only questions that shall be tried shall be the questions raised before the board by the remonstrance. On such trial the report of the engineer shall be admissible in evidence and nothing in this section shall be construed as authorizing or permitting the stoppage, prevention, or delay of the proposed work. If more than one party appeals, the appeals shall be consolidated and tried together and the rights of each appellant separately determined. If the

court finds for any appellant upon his or her remonstrance, it shall amend the report and the schedule of the assessment in accordance with its finding. The amended report and schedule shall be filed with the county clerk and a copy forwarded to the Director-State Engineer. If on appeal the court finds against the remonstrants, it shall dismiss the appeal at the cost of appellant.

Source: Laws 1921, c. 269, § 12, p. 897; C.S.1922, § 1037; C.S.1929, § 26-731; R.S.1943, § 23-320; Laws 1989, LB 26, § 1.

23-320.01 Flood control; powers of county board; contracts with federal government; appropriation of funds.

In any county of the State of Nebraska in which the Corps of Engineers of the United States Army, the Bureau of Reclamation, Natural Resources Conservation Service, or other department or agency of the federal government shall be authorized by Congress to construct works for flood control, watershed protection and flood prevention, irrigation, soil and water conservation, drainage, or similar projects, or in cooperation with the programs of natural resources districts, irrigation districts, reclamation districts, or similar agencies, the county board thereof shall, if in its opinion the construction is necessary for the public welfare, have the power to: (1) Enter into an undertaking, in the name of the county, to hold the United States of America free from any damage to persons or property resulting during the construction or after the completion thereof, (2) contract with the federal government, in the name of the county, that when the work is completed the county will maintain, keep in repair, and operate such flood control works or other similar projects, (3) furnish all necessary lands, rights-of-way, and easements, as provided in section 23-320.02, (4) appropriate such funds as may be necessary to fully develop, plan, and carry out a coordinated program of flood control or soil and water resource development for such county, and (5) appropriate such funds as may be necessary to pay the construction costs and expenses in excess of funds to be provided by the federal government.

Source: Laws 1947, c. 77, § 1, p. 241; Laws 1955, c. 67, § 1, p. 218; Laws 1961, c. 89, § 1, p. 310; Laws 1969, c. 154, § 1, p. 722; Laws 1999, LB 403, § 6.

23-320.02 Flood control; acquisition of lands, rights-of-way, and easements; procedure.

In any county, such as described in section 23-320.01, where it is necessary as a condition to the construction of any flood control works or other similar projects as provided in sections 23-320.01 to 23-320.07, that the county furnish the necessary lands, rights-of-way, or easements therefor, the county board is hereby authorized and empowered to acquire such lands, rights-of-way, or easements as may be necessary, and the board is hereby authorized and empowered to acquire the same by purchase or by gift or by the exercise of the right of eminent domain whether the property be within the limits of such county or outside its boundaries. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1947, c. 77, § 2, p. 242; Laws 1951, c. 101, § 68, p. 478; Laws 1961, c. 89, § 2, p. 311; Laws 1969, c. 155, § 1, p. 726; Laws 1981, LB 326, § 13.

Acquisition by city of easements and right-of-way for flood control project was authorized. Gruntorad v. Hughes Bros., 161 Neb. 358, 73 N.W.2d 700 (1955).

23-320.03 Flood control; bonds; amount; term; levy of tax.

Whenever in such county it is necessary to pay any construction costs and expenses in excess of the amounts paid by the federal government or to acquire any lands, rights-of-way, or easements under sections 23-320.01 to 23-320.06, the cost thereof and expenses connected therewith shall be defrayed by the issuance of general obligation bonds of the county, to be issued by the county board of such county without the necessity of an election, either in one issue or in separate issues from time to time as may be necessary and as determined by the county board of the county. The proceeds of the bonds shall be used for such purposes and no other except as otherwise provided in such sections. The aggregate of any such bonds so issued shall not be in excess of two-tenths of one percent of the taxable valuation of the county. All bonds issued under such sections shall mature in annual installments over a period of not more than twenty-five years, and it shall be the duty of the county board of such county to make an annual levy on all the taxable property in such county for the retirement of the principal and interest thereof as the same become due. The bonds provided for in such sections shall not be subject to nor included in any restrictions or limitations upon the amount of bonded indebtedness of the county contained in any other law affecting the county.

Source: Laws 1947, c. 77, § 3, p. 242; Laws 1965, c. 99, § 1, p. 418; Laws 1969, c. 154, § 2, p. 723; Laws 1979, LB 187, § 97; Laws 1992, LB 719A, § 97.

23-320.04 Flood control; liability on indemnity agreements; how paid; insurance.

Any loss, damage or expense for which the county or the county board may be liable by reason of having entered into an indemnity agreement or undertaking to protect and defend the federal government against loss or damage resulting from or growing out of such flood control works or other similar projects, may be paid for by said county from any funds on hand received from the sale of the bonds issued under the provisions of sections 23-320.01 to 23-320.07; *Provided,* that said county board may for the purpose of saving and protecting the county from any such loss, damage or expense, apply for and purchase from any insurance or indemnity company authorized to transact business in this state, an insurance or indemnity policy or policies of insurance, and pay the cost of obtaining the same from any funds received from the sale of bonds issued under the provisions of sections 23-320.01 to 23-320.07.

Source: Laws 1947, c. 77, § 4, p. 243; Laws 1961, c. 89, § 3, p. 311.

23-320.05 Flood control; maintenance and operation; coordinated program; tax levy; special fund; establish; use.

For the purpose of maintaining and operating such flood control works or other similar projects as provided in sections 23-320.01 to 23-320.07 when the works or projects have been completed and turned over to the county and also for the purpose of developing and carrying out a coordinated soil and water resource program and program of flood control for the county, the county board of such county shall be empowered to make an annual tax levy of not to

exceed one and seven-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such county. Pending approval of an authorized flood control plan, the county involved may establish a special flood and erosion control reserve fund. Such fund may be used for obtaining land, easements, and rights-of-way and relocating utilities in connection with water and erosion improvements that have authorization and construction approval. To aid in the growth of such fund, it may be invested in short-term securities authorized by section 77-2315. Money remaining in the fund at the completion of construction or the discontinuance of an authorized project may revert to the general fund. It shall be the duty of the county board and the county engineer to keep all such flood control works or other similar projects in serviceable condition and to make such repairs as may, from time to time, be necessary.

Source: Laws 1947, c. 77, § 5, p. 243; Laws 1953, c. 287, § 42, p. 955; Laws 1955, c. 67, § 2, p. 219; Laws 1961, c. 89, § 4, p. 312; Laws 1965, c. 100, § 1, p. 420; Laws 1979, LB 187, § 98; Laws 1989, LB 5, § 1; Laws 1992, LB 719A, § 98; Laws 1996, LB 1114, § 42.

23-320.06 Flood control; agreements with other governmental agencies; construction, maintenance, repair, and operation; coordinated program; employment of nonprofit corporation.

For the purpose of carrying out any of the provisions of sections 23-320.01 to 23-320.06, the county board is hereby authorized to enter into agreements with (1) the United States of America or any department or agency thereof, (2) any city, (3) any drainage district, (4) any other county, (5) any natural resources district, (6) any irrigation district, (7) any reclamation district, (8) any body politic, (9) any person, (10) any firm, or (11) any individual, whenever it shall be necessary as a condition to the construction of flood control works or other similar projects hereunder, and for the maintenance, repair, or operation thereof. To aid and assist in carrying out a coordinated soil and water resource program or program of flood control for any county, the county board may also employ the services of any nonprofit corporation or organization that has as one of its principal objectives or purposes the promotion and development of soil and water resource projects and flood control and to receive gifts and contributions from public and private sources to be expended in providing funds for construction costs and expenses in excess of funds to be provided by the federal government and the tax levy.

Source: Laws 1947, c. 77, § 6, p. 244; Laws 1955, c. 67, § 3, p. 219; Laws 1961, c. 89, § 5, p. 312; Laws 1969, c. 154, § 3, p. 724; Laws 1979, LB 187, § 99.

23-320.07 Flood control; cities; powers; eminent domain; bonds; tax levy; funds, how used.

Except as herein otherwise expressly provided, all of the rights, powers, authority, and jurisdiction conferred on counties and county boards by sections 23-320.01 to 23-320.06 are hereby also conferred upon and vested in any city of the first or second class or village located in any county such as described in section 23-320.01 and the governing body thereof. The governing body of any such city or village, in the name of the city or village, shall have the power to enter into undertakings and contracts and make agreements in like manner and for like purposes as provided in sections 23-320.01 to 23-320.06 for county

boards. Such governing body may provide funds for construction costs and expenses in excess of amounts contributed by the federal government, may acquire lands, rights-of-way, and easements either within or without the limits of the city or village in like manner and for like purposes as provided in section 23-320.02 for county boards, and without further authorization may issue general obligation bonds of the city or village to pay the costs thereof and expenses connected therewith in the manner now provided by law, but the aggregate of any such bonds so issued shall not be in excess of one and eight-tenths percent of the taxable value of the taxable property of the city or village. Such bonds shall not be subject to nor included in any restrictions or limitations upon the amount of bonded indebtedness of the city or village contained in any other law. Funds received from the sale of bonds by any such city or village may be used to pay any loss, damage, or expense for which the city or village or the governing body thereof may be liable in like manner as counties are authorized to pay such loss, damage, or expense under section 23-320.04. For the purposes of maintaining and operating flood control works constructed by the United States Army Corps of Engineers or other agencies of the United States Government, when the flood control works have been completed and turned over to the city or village, the governing body of such city or village shall be empowered to make an annual tax levy of not to exceed five and two-tenths cents on each one hundred dollars upon the taxable value of the taxable property within such city or village. It shall be the duty of the governing body of the city or village to keep all such flood control works in serviceable condition and to make such repairs as may from time to time be necessary.

Source: Laws 1947, c. 77, § 7, p. 244; Laws 1953, c. 287, § 43, p. 956; Laws 1963, c. 108, § 1, p. 435; Laws 1965, c. 99, § 2, p. 421; Laws 1969, c. 154, § 4, p. 724; Laws 1979, LB 187, § 100; Laws 1992, LB 1063, § 18; Laws 1992, Second Spec. Sess., LB 1, § 18; Laws 1996, LB 1114, § 43.

City is required to keep flood control works in serviceable condition and to make necessary repairs. Gruntorad v. Hughes Bros., 161 Neb. 358, 73 N.W.2d 700 (1955).

23-320.08 Flood control; cooperation with federal government; additional powers; agreements authorized.

In any county or counties of the State of Nebraska in which the United States, or any of its departments or agencies shall be authorized by Congress to construct works for flood control, watershed protection and flood prevention and drainage programs of the State of Nebraska or any of its agencies or in cooperation with the program of natural resources districts or similar public districts the county or counties, if in its or their opinion the construction is necessary for the public welfare, may: (1) Enter into an undertaking, in the name of the county, to hold the United States of America free from any damage to persons or property resulting during the construction or after the completion thereof; (2) contract with the federal government, in the name of the county, that when such work is completed the county will maintain, keep in repair, and operate such works of improvement; (3) furnish all necessary lands, rights-of-way, and easements as provided in section 23-320.10; (4) enter into agreements with other county governments on provisions for cooperative programs of resource development; (5) establish watershed boundary lines for taxation purposes so that property within the perimeter of the defined drainage-way will

be assessed for the financing of the program for improvement; and (6) appropriate such funds as may be needed to carry out and finance the program as outlined in sections 23-320.08 to 23-320.12.

Source: Laws 1963, c. 106, § 1, p. 431; Laws 1977, LB 510, § 5.

23-320.09 Repealed. Laws 1977, LB 510, § 10.

23-320.10 Flood control; construction of works; acquisition of rights-of-way and easements; eminent domain; procedure.

In any county or counties described in section 23-320.08, where it is necessary as a condition to the construction of any flood control works or other similar works of improvement as provided in sections 23-320.08 to 23-320.12, that the county furnish the necessary lands, rights-of-way, or easements therefor, the county board may acquire such lands, rights-of-way, or easements as may be necessary, and the board may acquire the same by purchase or by gift or by the exercise of the right of eminent domain. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1963, c. 106, § 3, p. 433.

23-320.11 Flood control; acquisition and operation of flood control works; tax levy authorized; repairs.

For the purpose of obtaining lands, easements, and rights-of-way and maintaining and operating such flood control works or other similar projects as provided in sections 23-320.08 to 23-320.12 when the same have been completed and turned over to the county and also for the purpose of developing and carrying out a coordinated soil and water resource program and program of flood control for the county, the county board of such county shall be empowered to make an annual tax levy of not to exceed one and seven-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in a designated watershed area. It shall be the duty of the county board and the county engineer to keep all such flood control works or other similar projects in serviceable condition and to make such repairs as may, from time to time, be necessary.

Source: Laws 1963, c. 106, § 4, p. 433; Laws 1979, LB 187, § 101; Laws 1992, LB 719A, § 99; Laws 1996, LB 1114, § 44.

23-320.12 Flood control; execution of program; parties to agreement; employment of services of nonprofit corporation.

For the purpose of carrying out any of the provisions of sections 23-320.08 to 23-320.12, the county board may enter into agreements with (1) the United States of America or any department or agency thereof, (2) any city, (3) any drainage district, (4) any other county, (5) any natural resources district, (6) any irrigation district, (7) any reclamation district, (8) any body politic, (9) any person, or (10) any firm, whenever it shall be necessary as a condition to the construction of flood control works or other similar projects under the provisions of sections 23-320.08 to 23-320.12, and for the maintenance, repair, or operation thereof. To aid and assist in carrying out a coordinated soil and water resource program or program of flood control for any county, the county board may also employ the services of any nonprofit corporation or organization that

has as one of its principal objectives or purposes the promotion and development of soil and water resource projects and flood control.

Source: Laws 1963, c. 106, § 5, p. 433.

23-320.13 Flood control; cities of the first class; project outside city limits; powers; authority.

All rights, powers, authority, and jurisdiction conferred on cities of the first class by sections 23-320.07 to 23-320.12, may be exercised by such city, in the absence of federal participation or sponsorship, whenever any project of flood control outside the limits of such city directly affects the welfare of such city and involves a cost of not to exceed five hundred thousand dollars.

Source: Laws 1965, c. 93, § 1, p. 401.

(d) COUNTY SUPPLIES

23-321 Repealed. Laws 1985, LB 393, § 18.

23-322 Transferred to section 23-346.01.

23-323 Repealed. Laws 1985, LB 393, § 18.

23-324 Repealed. Laws 1985, LB 393, § 18.

23-324.01 Transferred to section 23-3105.

23-324.02 Transferred to section 23-3106.

23-324.03 Transferred to section 23-3104.

23-324.04 Transferred to section 23-3107.

23-324.05 Repealed. Laws 1985, LB 393, § 18.

23-324.06 Transferred to section 23-3112.

23-324.07 Transferred to section 23-3113.

23-324.08 Transferred to section 23-3114.

(e) REAL ESTATE FOR PUBLIC USE

23-325 Real estate; appropriation; power of county board; procedure.

The county board shall have power to acquire, take, hold, appropriate, and condemn such real estate as may be necessary for convenience from time to time for the public use of the county; *Provided*, no appropriation of private property for the use of the county as aforesaid shall be made until full and just compensation therefor shall have been first made to the owner thereof. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1927, c. 56, § 1, p. 211; C.S.1929, § 26-709; R.S.1943, § 23-325; Laws 1951, c. 101, § 69, p. 478.

In condemnation proceedings Department of Roads and Irrigation follows procedural requirements set out herein. Hoesly v. Department of Roads & Irrigation, 142 Neb. 383, 6 N.W.2d 365 (1942).

Word ''owner'' in statute includes mortgagee and mortgagee is necessary party in action to condemn realty for public use under right of eminent domain. Northwestern Mutual Life Ins. Co. v. Nordhues, 129 Neb. 379, 261 N.W. 687 (1935).

Former act declared unconstitutional for failure to provide notice to landowners of steps on appraisement of damages. Sheridan County v. Hand, 114 Neb. 813, 210 N.W. 273 (1926).

Trial in condemnation proceedings may be had in name of person as plaintiff who owned land condemned at time proceedings were commenced. In such case, court should order payment of judgment to party entitled to damages. Sternberger v. Sanitary District No. 1 of Lancaster County, 100 Neb. 449, 160 N.W. 740 (1916).

Right of eminent domain is exercised only for public benefit. State v. Boone County, 78 Neb. 271, 110 N.W. 629 (1907).

County authorities will be discharged from liability upon making compensation to person, apparently sole owner. Cedar County v. Lammers, 73 Neb. 744, 103 N.W. 433 (1905).

County cannot be enjoined from acts necessary to improve road. Churchill v. Bethe, 48 Neb. 87, 66 N.W. 992 (1896).

23-326 Repealed. Laws 1951, c. 101, § 127.

23-327 Repealed. Laws 1951, c. 101, § 127.

23-328 Repealed. Laws 1951, c. 101, § 127.

23-329 Repealed. Laws 1951, c. 101, § 127.

23-330 Repealed. Laws 1955, c. 68, § 1.

23-331 Repealed. Laws 1951, c. 101, § 127.

23-332 Repealed. Laws 1951, c. 101, § 127.

(f) TRANSFER OF SURPLUS FUNDS

23-333 County surplus funds; how transferred; exceptions.

The county board of the several counties of the state may appropriate to the county general fund any county sinking fund in the county treasury not levied for the payment of any bonded indebtedness; also any county money from whatever source, excepting the money levied for school purposes, that remain on hand in the county treasury and are no longer required for the purposes for which same were levied; *Provided,* the county commissioners of the several counties of the state, not under township organization, may appropriate any unexpended balance remaining in the county treasury to the credit of any such precinct (such balance having accrued by reason of taxes collected from a precinct levy for the payment of bonds, after such bonds are paid), to the school districts within such precinct, apportioning such unexpended balance to the several school districts in the said precinct according to the property valuation of the several school districts, as found by the assessor for the year next preceding such appropriation. Where such unexpended balance accrued by reason of taxes collected from a precinct levy for the payment of bridge or irrigation bonds, the county boards of the several counties of the state, not under township organization, may appropriate such unexpended balance remaining in the county treasury to the credit of the road fund of the commissioner district of which such precinct forms a part, to be expended for the improvement of roads, within the limits of such original precinct wherein such taxes were collected.

Source: Laws 1877, § 1, p. 214; Laws 1903, c. 34, § 1, p. 283; Laws 1913, c. 30, § 1, p. 106; R.S.1913, § 1097; C.S.1922, § 1022; C.S.1929, § 26-716.

Taxes must be collected before they can be transferred to general fund. Bacon v. Dawes County, 66 Neb. 191, 92 N.W. 313 (1902).

Only surplus, after paying debt for which created, can be transferred. Union P. R. R. Co. v. Dawson County, 12 Neb. 254, 11 N.W. 307 (1882).

23-334 Repealed. Laws 1949, c. 36, § 1.

(g) EXPLOSIVES

23-335 Repealed. Laws 1988, LB 893, § 18.

(h) AWARDING CONTRACTS

23-336 County contracts; when invalid.

All contracts, either express or implied, entered into with any county board, for or on behalf of any county, and all orders given by any such board or any of the members thereof, for any article, service, public improvement, material or labor in contravention of any statutory limitation, or when there are or were no funds legally available therefor, or in the absence of a statute expressly authorizing such contract to be entered into, or such order to be given, are hereby declared unlawful and shall be wholly void as an obligation against any such county.

Source: Laws 1905, c. 55, § 1, p. 301; R.S.1913, § 1104; C.S.1922, § 1038; C.S.1929, § 26-732.

Employment of administrative assistant did not violate this section in absence of showing that funds were not legally available. Thiles v. County Board of Sarpy County, 189 Neb. 1, 200 N.W.2d 13 (1972).

Intention was to declare contracts unlawful where no statutory authority therefor exists. Capital Bridge Co. v. County of Saunders, 164 Neb. 304, 83 N.W.2d 18 (1957).

Contract for employment of expert to make an appraisal and comparative valuation on real estate in county did not violate this section. Speer v. Kratzenstein, 143 Neb. 310, 12 N.W.2d 360 (1943).

County, which has contracted to expend all funds raised by emergency legislation for poor relief and has exhausted the general fund, cannot be compelled by mandamus to contract further and issue warrants for payment. State ex rel. Boxberger v. Burns, 132 Neb. 31, 270 N.W. 656 (1937).

Right of county board to employ physician in an emergency upheld. Bartlett v. Dahlsten, 104 Neb. 738, 178 N.W. 636 (1920).

Section does not apply to payment to precinct assessors for official services. Hiatt v. Tomlinson, 102 Neb. 730, 169 N.W. 270 (1918).

Legislature by special act could authorize payment for articles purchased and retained by county in violation of this section. Gibson v. Sherman County, 97 Neb. 79, 149 N.W. 107 (1914).

23-337 Illegal contracts; liability of county officers.

Any public official or officials who shall audit, allow or pay out, or cause to be paid out, any funds of any county for any article, public improvement, material, service or labor, contrary to the provisions of section 23-336, shall be liable for the full amount so expended, and the same may be recovered from any such official or the surety upon his official bond by any such county, or any taxpayer thereof.

Source: Laws 1905, c. 55, § 2, p. 301; R.S.1913, § 1105; C.S.1922, § 1039; C.S.1929, § 26-733.

County officers were not liable in taxpayer's suit for payment of tax appraisal expert. Speer v. Kratzenstein, 143 Neb. 310, 12 N.W.2d 360 (1943).

County board cannot be compelled by mandamus to contract and issue warrants for poor relief after all funds raised by emergency legislation for that purpose have been exhausted, as well as the general fund. State ex rel. Boxberger v. Burns, 132 Neb. 31, 270 N.W. 656 (1937).

Prohibition of section does not extend to money paid to precinct assessors for official services. Hiatt v. Tomlinson, 102 Neb. 730, 169 N.W. 270 (1918).

23-338 Illegal contracts; county exempt from liability.

No judgment shall hereafter be rendered by any court against any such county in any action brought to recover for any article, public improvement, material, service or labor contracted for or ordered in contravention of any statutory limitation, or when there are or were no funds legally available at the time, with which to pay for the same, or in the absence of a statute expressly

authorizing such contract; *Provided,* that this section and sections 23-336 and 23-337 may not prevent the repairing of any bridge damaged by sudden casualty, when the county board shall first declare that an emergency exists, and give notice of its intention to repair such damage by at least one publication in some newspaper of general circulation in the county.

Source: Laws 1905, c. 55, § 3, p. 302; R.S.1913, § 1106; C.S.1922, § 1040; C.S.1929, § 26-734.

This section has no application where county has general authority to contract but the power has been irregularly exercised. Capital Bridge Co. v. County of Saunders, 164 Neb. 304, 83 N.W.2d 18 (1957).

Contract of county for purchase of road equipment sustained as legal and valid, and judgment thereon was not in contravention of this section. Omaha Road Equipment Co. v. Thurston County, 122 Neb. 35, 238 N.W. 919 (1931).

Prohibition of this section does not extend to money paid to precinct assessors for official services. Hiatt v. Tomlinson, 102 Neb. 730, 169 N.W. 270 (1918).

Contracts, by which attorney undertakes collection of dormant judgment for county on contingent basis, is not void because it is for contingent fee. Miles v. Cheyenne County, 96 Neb. 703, 148 N.W. 959 (1914).

Where question of failure to give notice by publication of intention to repair was raised for first time on appeal, it will not be considered. Standard Bridge Co. v. Kearney County, 95 Neb. 744, 146 N.W. 943 (1914).

(i) STREET IMPROVEMENT

23-339 Street improvement; county aid; when authorized.

The county board of any county in which any city or cities having over twenty-five thousand and less than one hundred thousand inhabitants is situated is hereby authorized and empowered, whenever the road fund or funds of said county will warrant it, to aid in the grading, paving or otherwise improving of any street, avenue or boulevard leading into said city and within the corporate limits thereof, by providing for the payment of not exceeding one-half of the cost of such grading, and not exceeding the cost of the paving of intersections. It shall also be authorized and empowered to grade, pave or otherwise improve any street, avenue, boulevard or road, or any portion thereof leading into or adjacent to any such city outside, or partly inside and partly outside the corporate limits thereof, including any portion thereof leading into or across any village or town, and for such improvements outside of the corporate limits of any such city as herein authorized and directed.

Source: Laws 1911, c. 25, § 1, p. 171; R.S.1913, § 1111; C.S.1922, § 1045; C.S.1929, § 26-739.

23-340 Streets outside corporate limits; improvement; notice to landowners; county aid.

Whenever the board shall contemplate the making of such improvements outside the corporate limits of any such city, it shall notify the county surveyor, whose duty it shall be to make an examination of the proposed improvement and report an estimate of the cost thereof to the board. If upon the consideration of such report, the county board determines to make the improvement, it shall cause personal notice to be served on the owners of property abutting on said road outside the corporate limits of such city of its intention to make such improvements, and if the owner is a nonresident, then by personal service upon the agent of such nonresident, if he has one residing in the county, and in case he has no such agent, by publishing such notice in a newspaper published in and of general circulation in such county. Upon the proof of service or publication of said notice, and after giving such owner an opportunity to be heard, the board shall decide upon the material to be used in such improvement and enter an order upon its records for the construction thereof; *Provided,*

however, whenever the street, avenue, boulevard or road upon which improvements are contemplated, lies adjacent to and outside, or partly inside and partly outside, the corporate limits of any such city, the examination of the proposed improvement, report and estimate of the cost thereof, shall be made jointly by the county surveyor and the city engineer of such city, and after the county board shall determine to make such improvement and decide upon the material to be used therein, nothing further shall be done toward the completion of such improvement until such city by and through its proper officers shall agree in writing, a copy of which shall be filed with the board, to construct the one-half of said improvement lying next to or within the corporate limits of the city and pay the cost of said one-half. After such agreement shall have been filed with the county board, the board shall proceed to construct the other one-half of such improvement in the manner provided herein. The county shall pay two-thirds of the cost of the other one-half of such improvement, and the other one-third shall be paid by special assessment of all the real estate abutting on or adjacent to said one-half as provided in section 23-341; *and provided further*, wherever any such city shall have improved any portion, equal to one-half or more, of any such street, avenue, boulevard or road lying adjacent to and wholly outside, or partly outside and partly inside the corporate limits of any such city, and either paid or provided for the payment of the cost of the same, the county board may proceed to improve in like manner the remaining portion of said street, avenue, boulevard or road, and of the cost thereof the county shall pay two-thirds and the other one-third shall be paid by special assessment of all the real estate abutting on or adjacent to said portion as provided for in section 23-341.

Source: Laws 1911, c. 25, § 2, p. 172; R.S.1913, § 1112; C.S.1922, § 1046; C.S.1929, § 26-740.

23-341 Streets outside corporate limits; improvement; cost; payment; assessments; determination; how levied.

Two-thirds of the cost of any such improvement authorized by sections 23-339 and 23-340 outside the corporate limits of such city and not adjacent thereto, as mentioned in section 23-339, shall be paid by said county board out of the road funds of the county, and one-third by special assessment of all real estate abutting on or adjacent to such improvement to a depth not exceeding five hundred feet on each side thereof, in proportion to the special benefits to such real estate by reason of such improvements. The benefits to such real estate shall be determined by the board, after publication in a newspaper of general circulation in the county, of notice to the owners of said real estate at least ten days prior to such determination. Such assessment may be made according to the foot frontage of real estate along the line of such improvement or according to such other rule or method as the board may adopt for the distribution and equalization of said one-third of the cost. The amount so assessed shall be placed upon the tax list for the ensuing year and collected in the same manner at the same time as the taxes of other property, and, when collected, shall be held in a special fund and used only in the payment of the cost of that particular improvement, as specified herein.

Source: Laws 1911, c. 25, § 3, p. 173; R.S.1913, § 1113; C.S.1922, § 1047; C.S.1929, § 26-741; R.S.1943, § 23-341; Laws 1963, c. 113, § 2, p. 442.

23-342 Streets outside corporate limits; improvement; contracts; conditions.

(1) All contracts for the construction of such improvements outside the corporate limits of any such city shall be let to the lowest responsible bidder who, except as provided in subsection (2) of this section, shall enter into a good and sufficient bond for the faithful performance of such contract in such amount and with such sureties as the county board may determine. All payments of such contracts shall be made by warrants drawn on the road fund of the county.

(2) If a contract, the provisions of which are limited to the purchase of supplies or materials, is entered into pursuant to this section and if the amount of the contract is fifty thousand dollars or less, an irrevocable letter of credit, a certified check upon a solvent bank, or a performance bond in a guaranty company qualified to do business in Nebraska, as prescribed by and in an amount determined by the county board of supervisors or commissioners, conditioned for the faithful performance of the contract and executed by the bidder to the county and to all parties interested in the amount of the bid, shall accompany the bid.

Source: Laws 1911, c. 25, § 4, p. 174; R.S.1913, § 1114; C.S.1922, § 1048; C.S.1929, § 26-742; R.S.1943, § 23-342; Laws 1987, LB 211, § 2.

(j) MEDICAL FACILITIES

23-343 Transferred to section 23-3501.

23-343.01 Transferred to section 23-3502.

23-343.02 Transferred to section 23-3503.

23-343.03 Transferred to section 23-3504.

23-343.04 Transferred to section 23-3505.

23-343.05 Transferred to section 23-3506.

23-343.06 Transferred to section 23-3507.

23-343.07 Transferred to section 23-3508.

23-343.08 Transferred to section 23-3509.

23-343.09 Repealed. Laws 1987, LB 134, § 9.

23-343.10 Transferred to section 23-3510.

23-343.11 Transferred to section 23-3511.

23-343.12 Transferred to section 23-3512.

23-343.13 Transferred to section 23-3513.

23-343.14 Transferred to section 23-3514.

23-343.15 Transferred to section 23-3515.

23-343.16 Transferred to section 23-3516.

23-343.17 Transferred to section 23-3517.

23-343.18 Transferred to section 23-3518.

23-343.19 Transferred to section 23-3519.

23-343.20 Transferred to section 23-3529.

23-343.21 Transferred to section 23-3530.

23-343.22 Transferred to section 23-3531.

23-343.23 Transferred to section 23-3532.

23-343.24 Transferred to section 23-3533.

23-343.25 Transferred to section 23-3534.

23-343.26 Transferred to section 23-3535.

23-343.27 Transferred to section 23-3536.

23-343.28 Transferred to section 23-3537.

23-343.29 Transferred to section 23-3538.

23-343.30 Transferred to section 23-3539.

23-343.31 Transferred to section 23-3540.

23-343.32 Transferred to section 23-3541.

23-343.33 Transferred to section 23-3542.

23-343.34 Transferred to section 23-3543.

23-343.35 Transferred to section 23-3544.

23-343.36 Transferred to section 23-3545.

23-343.37 Transferred to section 23-3546.

23-343.38 Transferred to section 23-3547.

23-343.39 Transferred to section 23-3548.

23-343.40 Transferred to section 23-3549.

23-343.41 Repealed. Laws 1987, LB 134, § 9.

23-343.42 Transferred to section 23-3550.

23-343.43 Transferred to section 23-3551.

23-343.44 Repealed. Laws 1969, c. 145, § 52.

23-343.45 Repealed. Laws 1987, LB 134, § 9.

23-343.46 Transferred to section 23-3552.

23-343.47 Transferred to section 23-3528.

23-343.48 Transferred to section 23-3553.

23-343.49 Transferred to section 23-3554.

23-343.50 Transferred to section 23-3555.

23-343.51 Transferred to section 23-3556.

23-343.52 Transferred to section 23-3557.

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23-343.57 Transferred to section 23-3562.

23-343.58 Transferred to section 23-3563.

23-343.59 Transferred to section 23-3564.

23-343.60 Transferred to section 23-3565.

23-343.61 Transferred to section 23-3566.

23-343.62 Transferred to section 23-3567.

23-343.63 Transferred to section 23-3568.

23-343.64 Transferred to section 23-3569.

23-343.65 Transferred to section 23-3570.

23-343.66 Transferred to section 23-3571.

23-343.67 Transferred to section 23-3572.

23-343.68 Transferred to section 23-3520.

23-343.69 Transferred to section 23-3521.

23-343.70 Transferred to section 23-3522.

23-343.71 Transferred to section 23-3523.

23-343.72 Transferred to section 23-3524.

23-343.73 Transferred to section 23-3525.

23-343.74 Transferred to section 23-3579.

23-343.75 Transferred to section 23-3580.

23-343.76 Transferred to section 23-3581.

23-343.77 Transferred to section 23-3582.

23-343.78 Transferred to section 23-3583.

23-343.79 Transferred to section 23-3584.

23-343.80 Transferred to section 23-3585.

23-343.81 Repealed. Laws 1985, LB 421, § 6.

23-343.82 Repealed. Laws 1979, LB 412, § 32.

23-343.83 Repealed. Laws 1986, LB 733, § 5.

23-343.84 Transferred to section 23-3586.

23-343.85 Transferred to section 23-3587.

23-343.86 Transferred to section 23-3588.

23-343.87 Transferred to section 23-3589.

23-343.88 Transferred to section 23-3590.

23-343.89 Transferred to section 23-3591.

23-343.90 Transferred to section 23-3592.

23-343.91 Transferred to section 23-3593.

23-343.92 Transferred to section 23-3594.

23-343.93 Transferred to section 23-3595.

23-343.94 Transferred to section 23-3596.

23-343.95 Transferred to section 23-3597.

23-343.96 Repealed. Laws 1979, LB 412, § 32.

23-343.97 Transferred to section 23-3598.

23-343.98 Repealed. Laws 1986, LB 733, § 5.

23-343.99 Transferred to section 23-3599.

23-343.100 Transferred to section 23-35,100.

23-343.101 Transferred to section 23-35,101.

23-343.102 Transferred to section 23-35,102.

23-343.103 Transferred to section 23-35,103.

23-343.104 Transferred to section 23-35,104.

23-343.105 Transferred to section 23-35,105.

23-343.106 Transferred to section 23-35,106.

23-343.107 Transferred to section 23-35,107.

23-343.108 Transferred to section 23-35,108.

23-343.109 Transferred to section 23-35,109.

23-343.110 Transferred to section 23-35,110.

23-343.111 Transferred to section 23-35,111.

23-343.112 Transferred to section 23-35,112.

23-343.113 Transferred to section 23-35,113.

23-343.114 Transferred to section 23-35,114.

23-343.115 Transferred to section 23-35,115.

23-343.116 Transferred to section 23-35,116.

23-343.117 Transferred to section 23-35,117.

23-343.118 Transferred to section 23-35,118.

23-343.119 Transferred to section 23-35,119.

23-343.120 Transferred to section 23-35,120.

23-343.121 Transferred to section 23-3526.

23-343.122 Transferred to section 23-3527.

23-343.123 Transferred to section 23-3573.

23-343.124 Transferred to section 23-3574.

23-343.125 Transferred to section 23-3575.

23-343.126 Transferred to section 23-3576.

23-343.127 Transferred to section 23-3577.

23-343.128 Transferred to section 23-3578.

(k) REPAIR OF PUBLIC BUILDINGS

23-344 Repealed. Laws 1996, LB 1114, § 75.

(l) RENTING MACHINERY TO FARMERS

23-345 County machinery; rental to farmers; conditions.

The board of county commissioners or the board of county supervisors of the counties of the State of Nebraska is hereby authorized and empowered to permit farmers and landowners in their respective counties to use county machinery and equipment in constructing and maintaining terraces and ditches in said respective counties; *Provided*, that said farmers or landowners shall first enter into a written agreement with said county commissioners or county supervisors whereby said farmers or landowners agree to pay a reasonable sum of money as rental for said equipment and machinery, which sum shall be fixed by the county commissioners or county supervisors, and to comply with any and all of the conditions and requirements in regard to said rental as made by said county commissioners or county supervisors; *Provided*, one of the conditions and requirements in regard to said rental shall always be that the county shall furnish an operator for said equipment and machinery, who shall operate

the same, and the compensation of said operator shall be considered in determining the amount of rental in each case.

Source: Laws 1935, c. 54, § 1, p. 184; C.S.Supp.,1941, § 26-757.

(m) INVENTORIES

23-346 Uniform inventory statements required.

The Auditor of Public Accounts shall establish a uniform system of inventory statements for all county officers and such system, when established, shall be installed and used by all county officers.

Source: Laws 1939, c. 28, § 1, p. 139; C.S.Supp.,1941, § 26-758.

23-346.01 County supplies in certain counties; annual estimate; perpetual inventory.

It shall be the duty of the county clerk, in all counties having a population of one hundred fifty thousand or more inhabitants, on or before December 1, annually, to prepare separate estimates of the supplies, materials, equipment and machinery required for the use of the county officers during the coming year, which by law are not required to be furnished by the state, and, in order to properly estimate the amounts of supplies, materials, equipment and machinery to be needed by the county government, the county clerk shall keep a perpetual inventory of all personal property of the county.

Source: Laws 1879, § 150, p. 392; R.S.1913, § 1089; C.S.1922, § 1014; C.S.1929, § 26-706; Laws 1943, c. 57, § 2, p. 227; R.S.1943, § 23-322; Laws 1974, LB 1007, § 1; R.S.1943, (1987), § 23-322.

Failure to carry out provisions of section will not justify removal of officer in absence of evil intent. Hiatt v. Tomlinson, 100 Neb. 51, 158 N.W. 383 (1916).

23-347 Inventory statement; duty of county officers to make; filing.

Within two calendar months after the close of each fiscal year, each county officer shall make, acknowledge under oath, and file with the county board of his or her county an inventory statement of all county personal property in the custody and possession of said county officer. The county board in each county shall examine into each inventory statement so filed, and, if said statement is correct and proper in every particular, the county board shall deliver each of said inventory statements to the clerk of the county for filing as a public record in said county clerk's office in a manner convenient for reference.

Source: Laws 1939, c. 28, § 2, p. 140; C.S.Supp.,1941, § 26-759; R.S. 1943, § 23-347; Laws 1981, LB 41, § 1.

23-348 Repealed. Laws 1972, LB 1382, § 9.

23-348.01 Inventory of real property; filing; contents.

Within two calendar months after the close of each fiscal year, each county board shall make, or cause to be made, acknowledged under oath, and filed with the county clerk of such county, an inventory statement of all real estate and real property in which such county has any interest of any kind. Such inventory shall include all real estate owned by the county or in which the county has an interest or lien of any kind including liens acquired by operation

of law for any purpose except real estate tax liens which have not been established by judicial decree and except those parcels of land owned by the county for road rights-of-way and other utility rights-of-way. Such inventory shall set forth a description of such properties with sufficient details that the property may be identified in the records of the register of deeds, and shall set forth, if within an area in which the property abuts upon a street, the street and street number of such property and shall set forth the use being made of such property. The county clerk shall retain such inventory for filing as a public record in his or her office in a manner convenient for reference.

Source: Laws 1972, LB 1382, § 8; Laws 1981, LB 41, § 2.

23-349 Inventory statements; public record.

All inventory statements required in sections 23-346 and 23-347 shall be filed with the county clerk as a public record, and shall be open to the inspection of the public.

Source: Laws 1939, c. 28, § 2, p. 141; C.S.Supp.,1941, § 26-759.

23-350 Inventory statements; failure to file; false statements; penalty.

Any county officer, including any member of any county board, who shall fail to file such inventory statements or who shall willfully make any false or incorrect statement therein, or who shall aid, abet, or connive in the making of any false or incorrect statement therein shall be guilty of a Class III misdemeanor. As part of the judgment of conviction, the court may decree such officer guilty of malfeasance in office for a palpable omission of duty and subject to removal under section 28-924.

Source: Laws 1939, c. 28, § 3, p. 141; C.S.Supp.,1941, § 26-760; R.S. 1943, § 23-350; Laws 1977, LB 40, § 89; Laws 2001, LB 8, § 1.

Cross References

For duties of county attorney upon notification of violation of section, see section 23-1201.

(n) MONUMENTS FOR HISTORIC SITES

23-351 Historic sites; monuments and markers; erection; expenditures authorized.

The county commissioners or county supervisors of any county in this state shall have authority to expend from the general fund of the county during any one year the proceeds of a tax of three-tenths of one cent on each one hundred dollars upon the taxable value of all taxable property in the county for the purchase and erection of suitable monuments or markers and the purchase of historic sites on which the monuments or markers are located within the county. In any county having a nonprofit historical association or society organized under the corporation laws of this state, the county commissioners or supervisors may grant to such association or society the amount authorized for expenditure by this section upon application by the association or society. Such funds may then be expended, at the direction of the board of directors of such association or society, for the following purposes: (1) Establishment, construction, and reconstruction of historical buildings; (2) purchase of exhibits, equipment, and real and personal property of historical significance and the maintenance thereof; and (3) lease, rental, purchase or construction, and maintenance

of buildings other than those of historical nature for the display and storage of exhibits.

Source: Laws 1927, c. 52, § 1, p. 207; C.S.1929, § 26-801; R.S.1943, § 23-351; Laws 1969, c. 159, § 1, p. 732; Laws 1979, LB 187, § 115; Laws 1992, LB 719A, § 101.

Cross References

For Highway Historical Markers purchased by the Nebraska State Historical Society, see section 82-120.

23-352 Monuments; markers; inscription.

Said monuments or markers shall have thereon a suitable inscription indicating the purpose for which the monument or marker is erected.

Source: Laws 1927, c. 52, § 2, p. 207; C.S.1929, § 26-802.

23-353 Monuments; markers; record of location.

The county board in each county where money is expended under sections 23-351 to 23-355 shall cause to be kept by the county clerk a record of each monument or marker erected, together with a full account of the location or event which said monument or marker shall commemorate, and a duplicate of said record signed by the members of the county board and attested by the signature and seal of the county clerk shall be sent to the Nebraska State Historical Society

Source: Laws 1927, c. 52, § 3, p. 207; C.S.1929, § 26-803.

23-354 Monuments; markers; eminent domain.

The county board shall have the right of eminent domain for the purpose of carrying out the provisions of sections 23-351 to 23-355.

Source: Laws 1927, c. 52, § 4, p. 207; C.S.1929, § 26-804.

23-355 Monuments; markers; plans; contracts; advisory committee; duties.

All work done under the provisions of sections 23-351 to 23-355 shall be done according to plans and specifications provided by the county board, and said board shall have authority to employ such persons as it deems necessary to prepare said plans and specifications. All work done under the provisions of said sections shall be by contract and said work shall be let to the lowest and best bidder after notice shall have been duly published for three successive weeks in a legal newspaper having general circulation in the county; *Provided*, where the estimate for labor and material is less than fifty dollars the county board may expend same without advertising. For the purpose of carrying out the provisions of said sections the county board may designate a committee of three residents of the county who shall serve without pay to assist in the location of said monuments or markers, the selection of sites, and the preparation of the record pertaining thereto. Said committee shall act in an advisory capacity to the county board.

Source: Laws 1927, c. 52, § 5, p. 207; C.S.1929, § 26-805.

23-355.01 Nonprofit county historical association or society; tax levy; requirements; funding request.

(1) Whenever there is organized within any county in this state a nonprofit county historical association or society organized under the corporation laws of this state, a tax of not more than three-tenths of one cent on each one hundred dollars upon the taxable value of all the taxable property in such county may be levied for the purpose of establishing a fund to be used for the establishment, management, and purchase of exhibits, equipment, and other personal property and real property and maintenance of such nonprofit county historical association or society, including the construction and improvement of necessary buildings therefor. The levy shall be part of the levy of the county subject to section 77-3442. Such fund shall be paid by the county treasurer to the treasurer of such nonprofit county historical association or society and shall be disbursed under the direction and supervision of the board of directors and officers of such nonprofit county historical association or society. No initial levy shall be made for such purpose unless the proposition to make such levy is first submitted to a vote of the people of the county at a general election and the same is ordered by a majority of the legal voters voting thereon. The proposition to make such levy shall be placed on the ballot by the county board of such county at the next general election following the receipt of a request from the board of directors of such nonprofit county historical association or society to submit such proposition to the voters of the county. After the proposition has been sanctioned by a vote of the people, such levy shall be made to carry out the purposes for which the fund was established. A nonprofit county historical association or society for which a tax is levied under this subsection is subject to the Nebraska Budget Act. The electors of the county may discontinue such levy by a vote of the people in the same manner that the initial levy was authorized. The proposition to discontinue such levy shall be placed on the ballot by the county board of such county at a general election only when requested so to do by a petition signed by at least twenty percent of the legal voters of such county based on the total vote cast for Governor at the last general election in the county.

(2) A nonprofit county historical association or society that is not receiving funds from a levy under subsection (1) of this section may request funding from the county. Approval of part or the entire funding request by the county board shall result in inclusion of the funding request in the county budget and an obligation to provide the funding set out in the county budget. The failure by the county to provide the funding for an approved request may be enforced by making a claim against the county. The funding shall be paid to the treasurer of the nonprofit county historical association or society. A nonprofit county historical association or society that is receiving funding under this subsection shall not be subject to the Nebraska Budget Act unless the approved request is more than five thousand dollars. If the approved request is more than five thousand dollars, the county shall include the budget and audit of the nonprofit county historical association or society with the county budget and audit.

Source: Laws 1957, c. 67, § 1, p. 291; Laws 1979, LB 187, § 116; Laws 1992, LB 719A, § 102; Laws 1996, LB 1114, § 45; Laws 2000, LB 968, § 13.

Cross References

Nebraska Budget Act, see section 13-501.

(o) DESTRUCTION OF FILES AND RECORDS

23-356 Repealed. Laws 1969, c. 105, § 11.

23-357 Repealed. Laws 1969, c. 105, § 11.

(p) ANIMAL DAMAGE CONTROL

23-358 Control program; county board; powers; requirements.

For the purpose of carrying on an organized animal damage control program within their respective counties, the county boards may cooperate with the Animal and Plant Health Inspection Service of the United States Department of Agriculture, state agencies, private associations, and individuals in the control of coyotes, bobcats, foxes, badgers, opossums, raccoons, skunks, and other predatory animals in this state that are injurious to livestock, poultry, and game animals and the public health. The county boards may also undertake the control of commensal and field rodents, nuisance birds, and other nuisance wildlife if such rodents, birds, or wildlife are causing or are about to cause property damage or represent a human health threat. All control efforts shall be in accordance with the organized and systematic plans of the United States Department of Agriculture and state agencies covering the management and control of animals, birds, and wildlife.

Source: Laws 1945, c. 53, § 1, p. 237; Laws 1959, c. 148, § 1, p. 563; Laws 1987, LB 102, § 1.

23-358.01 Control service; availability; payment.

It is the intent of sections 23-358 to 23-361 and 81-2,236 that animal damage control service shall be available to every individual citizen or group of citizens of the state and that employment of such service shall be initiated by the individual or individuals desiring the control of the animals, birds, or wildlife listed in section 23-358 which are causing a problem for such individual or individuals.

In order to support the cost of managing and controlling the animals, birds, or wildlife listed in section 23-358, each county shall match funds supplied by any resident individual or group of individuals either living within the county or owning property therein, up to a maximum of one thousand dollars annually for any specific animal damage control program, and may furnish such additional money as the county board shall deem necessary for the funding of such programs. The county board of each county is authorized to make necessary expenditures from the general fund of the county, except that the portion supplied by each county shall not exceed fifty percent of the total animal damage control program cost, unless such county elects to bear the entire program cost under sections 23-358 to 23-361. The total animal damage control program portion paid by the individual user or users may include, but shall not be limited to, any funds levied under section 23-361 by each county board, but nothing in this section shall be construed to exempt any user from a general levy made by the county board under section 23-360.

A county desiring to cooperate with another county or counties for the establishment of animal damage control services as are set forth in sections 23-358 to 23-361 may enter into agreements and match funds for the establish-

ment of an area program with the state or federal government pursuant to the terms and limitations set forth in section 81-2,236.

Source: Laws 1967, c. 124, § 1, p. 398; Laws 1969, c. 160, § 1, p. 733; Laws 1987, LB 102, § 2.

23-359 County board; expenditures authorized.

In order to perform animal damage control, the county board of each county may make necessary expenditures from any funds of the county as are available for such purpose.

Source: Laws 1945, c. 53, § 2, p. 238; Laws 1987, LB 102, § 3.

23-360 Program; tax levy; use.

The county board of each county in this state may levy upon every dollar of the taxable value of all the taxable property in such county, for the use of the county board in carrying out the animal damage control program, such amount as may be determined to be necessary therefor. The entire fund derived from such levy shall be set apart in a separate fund and expended only for animal damage control as defined by sections 23-358 to 23-360.

Source: Laws 1945, c. 53, § 3, p. 238; Laws 1953, c. 287, § 46, p. 958; Laws 1979, LB 187, § 117; Laws 1987, LB 102, § 4; Laws 1992, LB 719A, § 103; Laws 1996, LB 1114, § 46.

23-361 Additional tax on sheep and cattle; conditions.

In order to provide additional means for carrying on an animal damage control program for the management and control of coyotes, bobcats, foxes, and other predatory animals destructive of sheep and cattle, county boards may levy in any year a tax of not to exceed twenty cents per head on sheep and cattle on the following conditions:

(1) That a petition to the county board requesting such levy, signed by sixty-seven percent of the owners of the sheep, the cattle, or the sheep and cattle in the county as of January 1 of each year, be filed with the board on or before July 1; and

(2) That a planned program for the management and control of such predatory animals be approved by the county board each year in which such levy is to be made. Such planned program may include entry in the animal damage control program authorized by section 23-358 or any other program approved by the board and designed to manage and control such predatory animals. The proceeds of such levy shall be placed in a separate fund and shall be applied exclusively to carrying out the program adopted. For each year in which such a levy is deemed necessary, a petition shall be presented to the county board for approval as provided in this section.

Source: Laws 1957, c. 68, § 1, p. 292; Laws 1972, LB 1048, § 2; Laws 1987, LB 102, § 5.

(q) SUPPORT OF INDIANS

23-362 Indians; support; state aid to counties; purpose; conditions; audit; certificate of county assessor; alcohol-related programs; participation by county board.

In order to equitably distribute the added burden of law enforcement imposed upon certain counties of this state by reason of the passage of Public Law 280 of the Eighty-third Congress dealing with state jurisdiction and the resulting withdrawal of federal law enforcement in such counties, there shall each fiscal year be paid out of the state treasury, on the warrant of the Director of Administrative Services as directed by the chairperson of the Nebraska Commission on Law Enforcement and Criminal Justice, not to exceed one hundred one thousand dollars for the benefit of Indians in any county which has land held in trust by the United States Government for the benefit of Indians to be used for purposes of law enforcement and jail operations. Such funds shall be divided as equally as possible between the areas of law enforcement and jail operations. An audit shall be conducted biennially by the Auditor of Public Accounts or his or her designee of the funds distributed pursuant to this section. A detailed report shall be submitted on December 31 of each year, including discussion of the operation and expenditures of the office of the county sheriff and, every other year, a copy of the audit, to the Executive Board of the Legislative Council and the Governor. Such payment shall be made to any county of this state meeting the following conditions:

(1) Such county shall have on file in the office of the Nebraska Commission on Law Enforcement and Criminal Justice a certificate of the county assessor that there are within such county over twenty-five hundred acres of land held in trust by the United States or subject to restriction against alienation imposed by the United States; and

(2) The county board of each such county may participate in alcohol-related programs with nonprofit corporations.

Source: Laws 1957, c. 69, § 1, p. 293; Laws 1961, c. 91, § 1, p. 315; Laws 1967, c. 123, § 1, p. 397; Laws 1969, c. 161, § 1, p. 735; Laws 1974, LB 131, § 1; Laws 1976, LB 871, § 1; Laws 1979, LB 584, § 1; Laws 1983, LB 607, § 1; Laws 1985, LB 263, § 1; Laws 1994, LB 1001, § 1.

23-362.01 Indian reservation; county share of funds.

Each qualifying county in which an Indian reservation is located shall receive an equal share of the funds paid out in accordance with section 23-362 for each reservation within the county.

Source: Laws 1976, LB 871, § 3; Laws 1989, LB 5, § 3.

23-362.02 Repealed. Laws 1979, LB 584, § 4.

23-362.03 Repealed. Laws 1983, LB 607, § 8.

23-362.04 Transferred to section 81-1217.01.

23-363 Repealed. Laws 1971, LB 92, § 1.

23-364 Repealed. Laws 1974, LB 131, § 2.

(r) CONSTRUCTION OR REPAIR OF SIDEWALKS

23-365 Sidewalks; outside corporate limits of city or village; construct or repair; tax; levy; notice; construction by owner, when; appropriation.

A county having a population of more than thirty thousand inhabitants which has adopted county zoning regulations as provided in sections 23-161 to

23-174.09 may construct or repair sidewalks on any street of a plot of ground outside the corporate limits of a city or village which has been platted into lots and streets, and levy a special tax on lots or parcels of land within the platted area fronting on such sidewalk to pay the expense of such improvements, to be assessed as a special assessment after having given notice of its intention to do so (1) by publication in one issue of a legal newspaper having a general circulation in such county, and (2) by causing a written notice to be served upon the owner of such property involved and allowing the owner six months within which to complete such construction or repair. The estimated cost of any such construction or repair to be undertaken by the county shall annually be included in an appropriation.

Source: Laws 1961, c. 92, § 1, p. 318; Laws 1963, c. 117, § 1, p. 462.

23-366 Bids; special assessments; notice; levy.

The county board of such county may receive bids for constructing or repairing any or all such walks and may let contracts to the lowest responsible bidder for constructing or repairing the same.

The contractor or contractors shall be paid therefor from special assessments against the abutting property. The cost of constructing such sidewalks shall be assessed at a regular meeting of such county board by resolution, fixing the cost along abutting property as a special assessment against such property and the amount charged for the cost thereof with the vote by yeas and nays shall be spread upon the minutes. Notice of the time of such meeting of the county board and its purpose shall be published once in a newspaper published and of general circulation in such county at least five days before the meeting of the county board is to be held, or in place thereof, personal notice may be given such abutting property owners. Such special assessment shall be known as special sidewalk assessment and together with the cost of notice and necessary engineering services, shall be levied and collected as special taxes and shall draw interest at nine percent per annum from the date of levy thereof until satisfied.

Source: Laws 1961, c. 92, § 2, p. 318.

23-367 Special assessments; collection.

Special sidewalk assessments may be collected in the manner usual for the collection or foreclosure of county or state taxes against real estate.

Source: Laws 1961, c. 92, § 3, p. 319.

(s) STREET IMPROVEMENT DISTRICTS

23-368 Street improvements; limitation.

When the real property is located outside the corporate limits of a city or village the county is authorized to pave, repave, surface, resurface, and relay paving; to widen, to improve the horizontal and vertical alignment, to insert traffic medians, channels, overpasses, and underpasses; to apply temporary surfacing; and to curb; but the county may not be required to make any such street improvement if for good reason it deems the same should not be made; *Provided*, that none of the powers herein granted shall be exercised within the boundaries of any existing sanitary and improvement district, or road improve-

ment district; *and provided further*, that the powers delegated in this section shall never be exercised in the area within three miles of the corporate limits of a metropolitan city in such county or a primary city; within one mile of the corporate limits of a city of the first class; or within one-half mile of the corporate limits of a city of the second class or village.

Source: Laws 1961, c. 93, § 1, p. 319.

23-369 Street improvement districts; delineate; purpose.

To accomplish any of the purposes stated in section 23-368, the county is authorized in all such proceedings to delineate proposed street improvement districts which shall embrace therein the street or streets or part or parts thereof to be improved as well as the abutting, adjacent, and benefited property proposed to be assessed to cover in whole or in part the cost, including land acquisition expenses if any, of the proposed improvement outside of the corporate limits of any city or village.

Source: Laws 1961, c. 93, § 2, p. 320.

23-370 Resolution of county board; notice; objections; effect.

The county may set up an improvement district as provided in section 23-369 by resolution of the county board and after the passage, approval, and publication of such resolution shall publish notice of the creation of such street improvement district or districts for two consecutive weeks in a legal newspaper published in and of general circulation in such county or, if none is published in the county, in a legal newspaper of general circulation in such county. If a majority of the owners of record title of the property directly abutting on the street or streets improved shall file with the county clerk within twenty days after the first publication of such notice written objections to the creation of such district or districts, the improvements shall not be made, as provided in such resolution, but such resolution shall be repealed.

Source: Laws 1961, c. 93, § 3, p. 320; Laws 1986, LB 960, § 20.

23-371 Board of trustees; appointment; procedure.

If said objections are not filed against the district in the time and manner provided in section 23-370, the county board shall forthwith appoint a temporary board of three trustees and all further proceedings shall be in conformity with the provisions of Chapter 39, article 16.

Source: Laws 1961, c. 93, § 4, p. 321.

(t) SUBURBAN DEVELOPMENT

23-372 Subdivision of land, defined.

For purposes of sections 23-372 to 23-377, subdivision shall mean the division of a lot, tract, or parcel of land into two or more sites, or other divisions of land for the purpose, whether immediate or future, of ownership or building development, except that the division of land shall not be considered to be subdivision when the smallest parcel of land created is more than ten acres in area.

Source: Laws 1961, c. 94, § 1, p. 321; Laws 1975, LB 410, § 30.

23-373 Subdivisions; platting; approval of county board; exceptions.

Before an owner of real property located in an unincorporated area may subdivide, plat, or lay out the real property in building lots, streets, or other portions or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto, the approval of the county board is required, except that:

(1) If the property is within the Niobrara scenic river corridor as defined in section 72-2006, the approval of the Niobrara Council is required; and

(2) If the property is located in an area where a municipality exercises zoning control and does not require approval of the Niobrara Council, the approval of the municipality is required.

Source: Laws 1961, c. 94, § 2, p. 321; Laws 1967, c. 117, § 17, p. 377; Laws 2000, LB 1234, § 11.

23-374 Subdivisions; platting; requirements.

No plat of real property, described in section 23-373, shall be recorded or have any force and effect unless the same be approved by the county board of such county. The county board of such county shall have power, by resolution, to provide the manner, plan, or method by which real property in any such area may be subdivided, platted, or laid out, including a plan or system for the avenues, streets, or alleys to be laid out within or across the same including the hard surfacing thereof.

Source: Laws 1961, c. 94, § 3, p. 322.

23-375 Subdivisions; dedication of avenues, streets, alleys; hard surfacing.

The county board shall have power to compel the owner of any real property in such area in subdividing, platting, or laying out the same to conform to the requirements of the resolution and to lay out and dedicate the avenues, streets, and alleys and hard surfacing thereof in accordance therewith.

Source: Laws 1961, c. 94, § 4, p. 322.

23-376 Applicability of sections.

The provisions of sections 23-373 to 23-377 shall not apply in any county unless the county board of such county shall have first adopted a comprehensive development plan as defined in section 23-114.02, nor until the county board of such county has duly adopted comprehensive and uniform platting and subdivision regulations governing the alignment of streets, maximum grade of streets and minimum area of lots.

Source: Laws 1961, c. 94, § 5, p. 322; Laws 1967, c. 117, § 18, p. 378.

Approval by county board of transfer of land from one school district to another was not required by sections 23-373 to 23-377, R.R.S.1943, where there was no evidence that the county board had adopted ''comprehensive and uniform platting and subdivision regulations''. Schilke v. School Dist. No. 107 of Saunders County, 207 Neb. 448, 299 N.W.2d 527 (1980).

23-377 Subdivisions; comprehensive plan; standards; county board prescribe.

The county board shall also have authority to provide for a comprehensive plan for the area within the zoning and subdivision jurisdiction of the county, to be the general plan for the improvement and development of such area, and to prescribe standards for laying out subdivisions in harmony with such comprehensive plan.

Source: Laws 1961, c. 94, § 6, p. 322.

(u) AMBULANCES

23-378 Transferred to section 13-303.

(v) GARBAGE DISPOSAL

23-379 Garbage disposal plants; systems or solid waste disposal areas; purchase, construct, maintain.

Each county may purchase, construct, maintain, and improve garbage disposal plants, systems or solid waste disposal areas, and purchase equipment for the operation thereof, for the use of its inhabitants and incorporated municipalities located in such county, and may lease or take land in fee by donation, gift, devise, purchase or appropriation for rights-of-way, for the construction and operation of such a disposal plant, system or solid waste disposal areas. Each county may also make and enter into a contract or contracts with any person, firm, or corporation for the construction, maintenance, or operation of a garbage disposal plant, system or solid waste disposal area.

Source: Laws 1967, c. 112, § 1, p. 360; Laws 1969, c. 163, § 1, p. 737; Laws 1979, LB 22, § 1.

Cross References

For joint management of solid waste, see the Integrated Solid Waste Management Act, section 13-2001 et. seq.

23-380 Garbage disposal plant; system or solid waste disposal areas; cities and villages; agreement.

Any governing body of any incorporated city or village situated within the county may enter into agreement with the county as provided by the provisions of Chapter 13, article 8, to operate and maintain any garbage disposal plant, system or solid waste disposal areas located outside the corporate limits of the city or village. The garbage disposal plant, system or solid waste disposal areas shall be open to the public. The county board and the governing body of the city or village shall agree upon the operation and the appropriation of funds to such cooperative undertaking.

Source: Laws 1967, c. 112, § 2, p. 360; Laws 1969, c. 163, § 2, p. 738.

23-381 Garbage disposal; levy; tax.

The county board may levy a tax sufficient to cover the contributions required to be made. The levy shall be included in determining the maximum levy that a county is authorized to impose.

Source: Laws 1967, c. 112, § 3, p. 360; Laws 1999, LB 141, § 4.

(w) PUBLIC GATHERINGS

23-382 Public gatherings; protest; enjoin; grounds.

Whenever fifty or more residents of a county file a written protest with the county board of such county in which they contend that a proposed public exhibition, public entertainment, or public gathering will adversely affect the public health or welfare, or may adversely affect the health and welfare of those in attendance at such public exhibition, public entertainment, or public gathering the county board may set such protest for hearing, and if the board

thereafter determines that such exhibition, entertainment, or gathering will apparently have an adverse effect on the public health and welfare or the health and welfare of those in attendance, it shall forthwith cause an action to be brought in the appropriate court to restrain and enjoin such public exhibition, entertainment, or gathering. The court may restrain and permanently enjoin, where the facts indicate the necessity for such action on the basis of the public health and welfare, or, in the alternative, may impose such conditions on the holding of such exhibition, entertainment, or gathering, including the giving of a bond, as will adequately protect the public health and welfare or the health and welfare of those in attendance. The county board shall give such advance notice of the protest and of its hearing thereon as may be reasonable under the circumstances of the particular case, and the notice shall be given by the posting thereof at or immediately adjacent to the premises where such exhibition, entertainment, or gathering is to be held, and it may give such additional notice by publication, or by personal service or service by registered or certified mail on the owner, lessee, or occupant of the premises, or the promoter of such gathering or his agent, as the county board in its judgment may deem feasible.

Source: Laws 1971, LB 63, § 1.

(x) COMMUNITY ANTENNA TELEVISION SERVICE

23-383 Regulation by county; authorized.

All counties in Nebraska are hereby authorized and empowered by resolution to regulate the construction, installation, operation, and maintenance within their county limits and outside the limits of any incorporated city or village of all persons or entities furnishing community antenna television service. All counties, acting through their county boards, shall have power to require every individual or entity offering such service, subject to reasonable rules and regulations, to furnish any person applying therefor along the lines of its wires, cables or other conduits, with community antenna television service. The county board shall have power to prescribe reasonable quality standards for such service and to regulate and fix reasonable and compensatory rents or rates for such service including installation charges.

Source: Laws 1971, LB 257, § 1.

23-384 Construction, installation, operation, maintenance; permit required.

It shall be unlawful for any person, firm, or corporation to construct, install, operate, or maintain in or along the streets, alleys and public ways, or elsewhere within the limits of any county, and outside of the limits of any incorporated city or village a community antenna television service without first obtaining, from such county, a permit which permit shall authorize the grantee to provide community antenna television service on a nonexclusive basis within the limits of the county.

Source: Laws 1971, LB 257, § 2.

23-385 Underground cables and equipment; map; filing.

Counties may require the filing with the county clerk by the person, firm, or corporation constructing, installing, operating, or maintaining such community antenna television service of a proper map showing the exact location of all

underground cables and equipment, together with a statement showing the exact nature of the same.

Source: Laws 1971, LB 257, § 3.

23-386 Occupation tax; levy; due date.

Counties may levy an annual occupation tax against any person, firm, or corporation now maintaining and operating any community antenna television service within its boundaries; and may levy an annual occupation tax against any persons, firms, or corporations hereafter constructing, installing, operating, or maintaining such community antenna television service. Any such occupation tax so levied shall be due and payable on May 1 of each year to the treasurer of such county.

Source: Laws 1971, LB 257, § 4.

23-387 Violations; penalty.

In the event of violation of any provision of sections 23-383 to 23-388 by any person or entity furnishing community antenna television service, the county having granted such permit shall immediately serve notice of such violation upon the permitholder with directions to correct such violation within ninety days or show cause why such violation should not be corrected at a public hearing held in conjunction with the next regularly scheduled meeting of the board. Continued violation of sections 23-383 to 23-388 may be enjoined by the district court. Any person who willfully violates any provision of sections 23-383 to 23-388 shall be guilty of a Class IV misdemeanor for each offense.

Source: Laws 1971, LB 257, § 5; Laws 1977, LB 40, § 90.

23-388 Franchise granted by municipality; exempt from sections.

No community television franchise heretofore or hereafter granted by any municipality under the provisions of Chapter 18, article 22, shall be affected by the provisions of sections 23-383 to 23-388.

Source: Laws 1971, LB 257, § 6.

(y) COUNTY HORSERACING FACILITIES

23-389 County; provide for horseracing facilities; paid for by revenue bonds; bond anticipation notes; procedure.

Any county of the State of Nebraska may acquire a site or sites and construct, purchase, or otherwise acquire, remodel, repair, furnish, and equip grandstands, pavilions, exhibition halls, barns, racetracks, and other horseracing facilities by issuing revenue bonds payable solely from the revenue therefrom. The bonds shall not constitute a debt of the county or the State of Nebraska but shall be payable solely out of the revenue. Such bonds shall mature in not to exceed thirty years and bear interest at such rates and have such other terms and conditions as the county board shall determine. A county undertaking construction and acquisition of such facilities shall have the power from time to time to issue bond anticipation notes to mature not less than thirty months from the date thereof in an amount not exceeding the aggregate at any time outstanding of the amount of bonds then or theretofore authorized. Payment of such notes shall be made from any money or revenue which the county may

have available for such purposes or from the proceeds of the sale of the revenue bonds authorized in this section. The county may pledge any revenue derived from the operation, management, or sale of the property constructed or acquired with the proceeds of the bonds for the payment of such notes and revenue bonds. Such bonds shall be registered with the county clerk.

Source: Laws 1976, LB 519, § 1; Laws 2001, LB 420, § 20.

23-390 Horseracing facilities; operation and maintenance; nonprofit corporation; use of revenue.

Any county constructing or acquiring any of the facilities authorized in section 23-389 that include racetrack and horseracing facilities shall be authorized to lease to or enter into an agreement for operation and maintenance of such facilities by a Nebraska nonprofit corporation organized exclusively for civic purposes or which conducts a livestock exposition for the promotion of the livestock or horse-breeding industry of the state and which does not permit its members to derive personal profit from its activities by way of dividends or otherwise. Any such lease or operating agreement shall provide that all revenue derived therefrom shall be used for expenses of operation and maintenance of the facilities, improvements, or additions to such facilities and public works projects within the county.

Source: Laws 1976, LB 519, § 2.

23-391 Horseracing facilities; taxes or assessments; exemption; exceptions.

Counties acquiring and owning any facilities described in section 23-389 shall not be required to pay taxes or assessments upon any such facilities or upon any charges, fees, revenue, or other income received from such facilities except motor vehicle fuel taxes and the tax and fees imposed by section 2-1208.

Source: Laws 1976, LB 519, § 3.

23-392 Act, how cited.

Sections 23-389 to 23-392 shall be known and may be cited as the County Horseracing Facility Bond Act.

Source: Laws 1976, LB 519, § 4.

(z) IDENTIFICATION CARDS

23-393 Repealed. Laws 1989, LB 284, § 12.

23-394 Repealed. Laws 1989, LB 284, § 12.

23-395 Repealed. Laws 1989, LB 284, § 12.

23-396 Repealed. Laws 1989, LB 284, § 12.

(aa) BRIDGE CONSTRUCTION AND REPAIR

23-397 Bridge construction and repair; bonds; issuance; election; procedure.

The county board of any county may issue and sell the general obligation bonds of such county in such amount as the county board may deem advisable for paying the costs of constructing, improving, reconstructing, and repairing

bridges and bridge related roadway improvements upon public roads within or adjacent to such county. Such bonds shall bear interest at a rate or rates set by the county board and shall mature at such time or times as shall be set by the county board. No such bonds shall be issued until a proposition for their issuance shall have been submitted to the voters of such county at a general or special election called for such purpose and approved by a majority of the voters voting at such election. Such election may be called either by resolution of the county board or upon a petition submitted to the county board calling for an election. Such petition shall be signed by the legal voters of the county equal in number to ten percent of the number of votes cast in the county for the office of Governor at the most recent election at which the Governor was elected. Notice of any such election shall be given in the manner required for county election notices in section 23-126.

Source: Laws 1982, LB 492, § 1.

23-398 Bonds; levy of tax.

In any county which has issued bonds pursuant to section 23-397, the county board shall levy annually upon all the taxable property in such county a tax sufficient to pay the interest and principal of such bonds as the same fall due.

Source: Laws 1982, LB 492, § 2.

ARTICLE 4

COUNTY WORKHOUSES AND HOUSES OF CORRECTION

Section

23-401 Repealed. Laws 1980, LB 741, § 1.

23-402 Repealed. Laws 1980, LB 741, § 1.

23-403 Repealed. Laws 1980, LB 741, § 1.

23-404 Repealed. Laws 1980, LB 741, § 1.

23-405 Repealed. Laws 1980, LB 741, § 1.

23-406 Repealed. Laws 1980, LB 741, § 1.

23-407 Repealed. Laws 1980, LB 741, § 1.

23-408 Repealed. Laws 1980, LB 741, § 1.

23-409 Repealed. Laws 1980, LB 741, § 1.

23-410 Repealed. Laws 1980, LB 741, § 1.

23-411 Repealed. Laws 1980, LB 741, § 1.

23-412 Repealed. Laws 1980, LB 741, § 1.

23-413 Repealed. Laws 1980, LB 741, § 1.

23-414 Repealed. Laws 1980, LB 741, § 1.

23-415 Repealed. Laws 1980, LB 741, § 1.

23-416 Repealed. Laws 1980, LB 741, § 1.

23-417 Repealed. Laws 1980, LB 741, § 1.

23-418 Repealed. Laws 1980, LB 741, § 1.

23-419 Repealed. Laws 1980, LB 741, § 1.

23-420 Repealed. Laws 1955, c. 69, § 1.

23-421 Repealed. Laws 1955, c. 69, § 1.

23-422 Repealed. Laws 1955, c. 69, § 1.

23-423 Repealed. Laws 1955, c. 69, § 1.

ARTICLE 5
PUBLIC BUILDING TAX

Section

23-501 County buildings; erection; petition.

Whenever it is deemed necessary to erect a courthouse, jail, or other public county buildings in any county in this state, the county board may and, upon petition of not less than one-fourth of the registered voters of the county as shown by the list of registered voters of the last previous general election, shall submit to the people of the county to be voted upon at a general election or at a special election called by the county board for that purpose a proposition to vote a special annual tax for that purpose of not to exceed three and five-tenths

cents on each one hundred dollars upon the taxable value of all the taxable property in such county for a term of not to exceed five years. The special annual tax is excluded from the limitation in section 77-3442 as provided by section 77-3444.

Source: Laws 1895, c. 27, § 1, p. 129; Laws 1897, c. 22, § 1, p. 187; Laws 1909, c. 31, § 1, p. 213; R.S.1913, § 436; C.S.1922, § 353; C.S. 1929, § 11-701; R.S.1943, § 23-501; Laws 1953, c. 287, § 47, p. 958; Laws 1979, LB 187, § 120; Laws 1992, LB 719A, § 104; Laws 1997, LB 764, § 7; Laws 1999, LB 141, § 5.

Authority to borrow money for the purpose of building a courthouse must be conferred by a vote of the electors. Lewis v. Board of County Commissioners of Sherman County, 5 F. 269 (Cir. Ct., D. Neb. 1881).

23-502 Election; proposition; submission.

The manner of submitting such proposition shall be governed by section 23-126.

Source: Laws 1895, c. 27, § 2, p. 129; R.S.1913, § 437; C.S.1922, § 354; C.S.1929, § 11-702.

23-503 Election; tax; how collected; resubmission of proposal.

The county board, upon being satisfied that all the foregoing requirements have been substantially complied with, and that sixty percent of all the votes cast at said election are in favor of such tax, shall cause such proposition and all the proceedings had thereon to be entered upon the records of said county board, and shall make an order that said levy be carried on the tax lists in a column for that purpose, and collected as other taxes; *Provided*, that the question of levying such taxes, when defeated, shall not be resubmitted in substance for a period of one year from and after the date of said election.

Source: Laws 1895, c. 27, § 3, p. 129; R.S.1913, § 438; C.S.1922, § 355; Laws 1923, c. 186, § 1, p. 429; C.S.1929, § 11-703.

Inclusion of an airport authority budget in general city budget hearing did not meet requirement of public budget hearing, after notice, by airport authority. Willms v. Nebraska City Airport Authority, 193 Neb. 567, 228 N.W.2d 276 (1975).

23-504 Tax; when levied.

If the time such election is held and such tax voted is before the tax lists for that year have been delivered to the county treasurer, then such levy shall be entered upon such tax lists for that year; but if such election is not held until after the tax lists for that year have been delivered to the county treasurer, then such tax shall not be levied or carried on such tax lists until the next annual levy of taxes, when the same shall be levied and collected annually for the time voted at such election.

Source: Laws 1895, c. 27, § 4, p. 130; R.S.1913, § 439; C.S.1922, § 356; C.S.1929, § 11-704.

23-505 Sinking fund.

Such sum so levied and collected shall constitute a special fund for the purposes for which the same was voted and shall not be used for any other purpose, and shall be kept by the county treasurer separate and apart from the other county funds.

Source: Laws 1895, c. 27, § 5, p. 130; R.S.1913, § 440; C.S.1922, § 357; C.S.1929, § 11-705.

23-506 Public buildings; contracts; warrants; when authorized.

No contract shall be entered into by the county board for the erection of buildings to be paid for out of such fund until at least seventy percent of such levy has been collected and paid into the county treasury. After the completion of said building, if sufficient funds are not in the county treasury to finish paying for same, warrants may be issued to an amount not exceeding eighty-five percent of the levy yet uncollected.

Source: Laws 1895, c. 27, § 6, p. 130; R.S.1913, § 441; C.S.1922, § 358; Laws 1923, c. 38, § 1, p. 152; C.S.1929, § 11-706.

23-507 Surplus building fund; disposition.

In case the amount so produced by the rate of tax so proposed and levied shall exceed the amount expended for the specific object for which the same was voted, it shall not therefor be held invalid, but such excess, after said buildings and furnishings are paid for, shall go into the county general fund.

Source: Laws 1895, c. 27, § 7, p. 130; R.S.1913, § 442; C.S.1922, § 359; C.S.1929, § 11-707.

ARTICLE 6
BOUNTIES

Section
23-601. Repealed. Laws 1965, c. 96, § 5.
23-602. Repealed. Laws 1965, c. 96, § 5.
23-603. Repealed. Laws 1965, c. 96, § 5.
23-604. Repealed. Laws 1965, c. 96, § 5.
23-605. Repealed. Laws 1965, c. 96, § 5.
23-606. Repealed. Laws 1965, c. 96, § 5.
23-607. Repealed. Laws 1965, c. 96, § 5.
23-608. Repealed. Laws 1965, c. 96, § 5.
23-609. Transferred to section 81-2,236.
23-610. Repealed. Laws 1967, c. 124, § 3.
23-611. Repealed. Laws 1967, c. 124, § 3.
23-612. Repealed. Laws 1967, c. 124, § 3.

23-601 Repealed. Laws 1965, c. 96, § 5.

23-602 Repealed. Laws 1965, c. 96, § 5.

23-603 Repealed. Laws 1965, c. 96, § 5.

23-604 Repealed. Laws 1965, c. 96, § 5.

23-605 Repealed. Laws 1965, c. 96, § 5.

23-606 Repealed. Laws 1965, c. 96, § 5.

23-607 Repealed. Laws 1965, c. 96, § 5.

23-608 Repealed. Laws 1965, c. 96, § 5.

23-609 Transferred to section 81-2,236.

23-610 Repealed. Laws 1967, c. 124, § 3.

23-611 Repealed. Laws 1967, c. 124, § 3.

23-612 Repealed. Laws 1967, c. 124, § 3.

ARTICLE 7
COUNTY PUBLIC WELFARE WORK

Section
23-701. Repealed. Laws 1955, c. 71, § 1.
23-702. Repealed. Laws 1955, c. 71, § 1.
23-703. Repealed. Laws 1955, c. 71, § 1.
23-704. Repealed. Laws 1955, c. 71, § 1.
23-705. Repealed. Laws 1955, c. 71, § 1.
23-706. Repealed. Laws 1955, c. 71, § 1.
23-707. Repealed. Laws 1955, c. 71, § 1.
23-708. Repealed. Laws 1955, c. 71, § 1.
23-709. Repealed. Laws 1955, c. 71, § 1.

23-701 Repealed. Laws 1955, c. 71, § 1.

23-702 Repealed. Laws 1955, c. 71, § 1.

23-703 Repealed. Laws 1955, c. 71, § 1.

23-704 Repealed. Laws 1955, c. 71, § 1.

23-705 Repealed. Laws 1955, c. 71, § 1.

23-706 Repealed. Laws 1955, c. 71, § 1.

23-707 Repealed. Laws 1955, c. 71, § 1.

23-708 Repealed. Laws 1955, c. 71, § 1.

23-709 Repealed. Laws 1955, c. 71, § 1.

ARTICLE 8
RECREATION, ENTERTAINMENT, AMUSEMENTS; REGULATION

(a) TOWNSHIP BAND

Section
23-801. Repealed. Laws 1996, LB 1114, § 75.
23-802. Repealed. Laws 1996, LB 1114, § 75.
23-803. Repealed. Laws 1996, LB 1114, § 75.
23-804. Repealed. Laws 1996, LB 1114, § 75.
23-805. Repealed. Laws 1996, LB 1114, § 75.
23-806. Repealed. Laws 1996, LB 1114, § 75.
23-807. Repealed. Laws 1996, LB 1114, § 75.

(b) POOL HALLS AND BOWLING ALLEYS

23-808. Pool hall; bowling alley; operation without license; penalty.
23-809. Pool hall; bowling alley; petition for license.
23-810. Pool hall; bowling alley; license; hearing; renewal.
23-811. Pool hall; bowling alley; license fee; closing hour; determination by county board.
23-812. Pool hall; bowling alley; licensee; violations; forfeiture of license.

(c) DANCE HALLS, ROADHOUSES, CARNIVALS, SHOWS, AND AMUSEMENT PARKS

23-813. Roadhouses; dance halls; carnivals; shows; amusement parks; license required.
23-814. Roadhouses; dance halls; carnivals; shows; amusement parks; petition for license.

(a) TOWNSHIP BAND

23-801 Repealed. Laws 1996, LB 1114, § 75.

23-802 Repealed. Laws 1996, LB 1114, § 75.

23-803 Repealed. Laws 1996, LB 1114, § 75.

23-804 Repealed. Laws 1996, LB 1114, § 75.

23-805 Repealed. Laws 1996, LB 1114, § 75.

23-806 Repealed. Laws 1996, LB 1114, § 75.

23-807 Repealed. Laws 1996, LB 1114, § 75.

(b) POOL HALLS AND BOWLING ALLEYS

23-808 Pool hall; bowling alley; operation without license; penalty.

No person hereafter shall conduct or operate any pool or billiard hall or bowling alley outside the limits of any incorporated city or village without having first obtained a license from the county board of the county in which the same is to be operated. Any person, corporation or association violating the provisions of this section shall be guilty of a Class V misdemeanor. Every day in which the pool or billiard hall or bowling alley shall be operated without said license shall constitute a new offense.

Source: Laws 1913, c. 55, § 1, p. 163; R.S.1913, § 1115; Laws 1917, c. 21, § 1, p. 86; C.S.1922, § 1049; C.S.1929, § 26-743; R.S.1943, § 23-808; Laws 1977, LB 40, § 91.

23-809 Pool hall; bowling alley; petition for license.

Before any such license shall be originally granted by the county board, the applicant therefor shall file a petition in the office of the county clerk of said county praying that said license be granted. The petition must be signed by at least thirty of the resident freeholders of the precinct in which said pool or billiard hall or bowling alley is located and operated.

Source: Laws 1913, c. 55, § 2, p. 163; R.S.1913, § 1116; C.S.1922, § 1050; C.S.1929, § 26-744; R.S.1943, § 23-809; Laws 1965, c. 105, § 1, p. 429.

23-810 Pool hall; bowling alley; license; hearing; renewal.

Notice of the application for original license shall be published at the expense of the applicant for two consecutive weeks in some newspaper of general circulation in such county and precinct giving the time and place at which the application will be considered by the county board. If the applicant is an individual, the application shall include the applicant's social security number. After full consideration, and the hearing of remonstrants, if there be any, the county board may, in its discretion, grant or withhold such license. Any such license may be renewed from year to year upon application and payment of the fee provided in section 23-811, without petition or publication of notice.

Source: Laws 1913, c. 55, § 3, p. 163; R.S.1913, § 1117; C.S.1922, § 1051; C.S.1929, § 26-745; R.S.1943, § 23-810; Laws 1965, c. 105, § 2, p. 429; Laws 1997, LB 752, § 79.

23-811 Pool hall; bowling alley; license fee; closing hour; determination by county board.

Before the issuance of such license by the county board, the applicant therefor shall pay into the county treasury the sum of ten dollars per table for the first three tables and five dollars for each additional table and ten dollars per alley for the first three alleys and five dollars for each additional alley as license fee for the period of one year from the date of issuance of said license. Said pool or billiard hall or bowling alley shall be required to close as determined by resolution of the county board.

Source: Laws 1913, c. 55, § 4, p. 164; R.S.1913, § 1118; C.S.1922, § 1052; C.S.1929, § 26-746; R.S.1943, § 23-811; Laws 1961, c. 95, § 1, p. 323; Laws 1963, c. 113, § 5, p. 445.

23-812 Pool hall; bowling alley; licensee; violations; forfeiture of license.

Any licensee under sections 23-808 to 23-812 who shall be convicted of violation of any law regulating such places of amusement during the life of his license shall forfeit said license upon order of the county board. Such order shall be entered by the county board upon hearing and proof which shall include the filing of a transcript from any court showing such conviction.

Source: Laws 1913, c. 55, § 5, p. 164; R.S.1913, § 1119; C.S.1922, § 1053; C.S.1929, § 26-747.

(c) DANCE HALLS, ROADHOUSES, CARNIVALS, SHOWS, AND AMUSEMENT PARKS

23-813 Roadhouses; dance halls; carnivals; shows; amusement parks; license required.

No person, association, firm, or corporation shall conduct or operate any roadhouse, dance hall, carnival, show, amusement park, or other place of public amusement, outside the limits of any incorporated city or village in the State of Nebraska, without first having obtained a license from the county board of the county in which the same is to be operated. If the applicant is an individual, the application shall include the applicant's social security number. Any person, corporation, or association violating the provisions of this section shall be guilty of a Class V misdemeanor. No license shall be required for a

dance in an inhabited private home to which no admission or other fee is charged.

Source: Laws 1931, c. 38, § 1, p. 131; C.S.Supp.,1941, § 26-751; R.S. 1943, § 23-813; Laws 1947, c. 68, § 1, p. 219; Laws 1977, LB 40, § 92; Laws 1997, LB 752, § 80.

23-814 Roadhouses; dance halls; carnivals; shows; amusement parks; petition for license.

Before any such license shall be granted by the county board, the applicant therefor shall file a petition in the office of the county clerk of said county praying that said license be granted.

Source: Laws 1931, c. 38, § 2, p. 131; C.S.Supp.,1941, § 26-752.

23-815 Roadhouses; dance halls; carnivals; shows; amusement parks; petition for license; notice; hearing.

Notice of said application shall be published at the expense of the applicant for two consecutive weeks in a legal newspaper of general circulation in said county and precinct, giving the time and place at which said application will be considered by the county board. After full consideration, and the hearing of remonstrants, if there be any, the county board may, in its discretion, grant or withhold said license. A renewal of such license may be granted upon application and without complying with the provisions of this section.

Source: Laws 1931, c. 38, § 3, p. 131; C.S.Supp.,1941, § 26-753.

23-816 Roadhouses; dance halls; carnivals; shows; amusement parks; license fee.

Before any such license shall be issued by any county board, the applicant therefor shall pay into the county treasury an annual license fee of ten dollars.

Source: Laws 1931, c. 38, § 4, p. 131; C.S.Supp.,1941, § 26-754; R.S. 1943, § 23-816; Laws 1953, c. 54, § 1, p. 187.

23-817 Roadhouses; dance halls; carnivals; shows; amusement parks; license; revocation; violations by licensee; penalty.

Any person, association, firm or corporation licensed under the provisions of sections 23-813 to 23-816, who shall be convicted of the violation of any law regulating such places of amusement shall have his license revoked upon order of the county board after notice of such proposed action has been given by said board and the licensee has been afforded a reasonable opportunity to appear and show cause why such action should not be had. Any person, association, firm, or corporation violating any of the provisions of said sections shall be guilty of a Class V misdemeanor, and every day upon which this violation shall continue shall be deemed a separate and distinct offense.

Source: Laws 1931, c. 38, § 5, p. 132; C.S.Supp.,1941, § 26-755; R.S. 1943, § 23-817; Laws 1977, LB 40, § 93.

23-818 Roadhouse, defined.

For the purpose of sections 23-813 to 23-817, a roadhouse shall mean an inn or any other place where the public is invited to eat, drink, dance, or participate in any combination of any two or more of these activities.

Source: Laws 1949, c. 34, § 1, p. 127.

(d) PUBLIC GROUNDS AND PARKS

23-819 Public grounds and parks; improvement; statues, memorials, and works of art; erection and construction; gifts and bequests.

Any county shall have power to purchase, hold, and improve public grounds and parks within the limits of the county, to provide for the protection and preservation of the same, to provide for the planting and protection of shade or ornamental trees, to erect and construct or aid in the erection and construction of statues, memorials, and works of art upon any public grounds, and to receive donations and bequests of money or property for the above purposes in trust or otherwise.

Source: Laws 1963, c. 107, § 1, p. 434.

Counties are empowered to acquire real estate by gift. Bowley v. City of Omaha, 181 Neb. 515, 149 N.W.2d 417 (1967).

23-820 Transferred to section 13-304.

23-821 Transferred to section 13-305.

23-822 Transferred to section 13-306.

23-823 Transferred to section 13-307.

ARTICLE 9
BUDGET

Cross References

For practices and procedures applicable to all political subdivisions, see the Nebraska Budget Act, section 13-501 et seq.

(a) APPLICABLE ONLY TO COUNTIES

Section
23-901. Act, how cited.
23-902. Sections; applicability; fiscal year.
23-903. County budget; scope and contents.
23-904. County budget document; three parts.
23-905. County budget; budget document; forms; preparation; Auditor of Public Accounts; duties; expenses.
23-906. Budget-making authority, how constituted; budget, when prepared; contents; notice of hearing.
23-907. Hearing; duty of county board.
23-908. Budget revision; power of county board; hearing.
23-909. Budget; when adopted; duty of county board.
23-910. Budget; income from taxation; how determined; estimated revenue; deduction.
23-911. Budget; income from taxation; limitation.
23-912. Budget; income from taxation; deemed appropriated.
23-913. Budget summary; contents; filing.
23-914. Unexpended balances; expenditure; limitation.
23-915. Budget; failure of county board to adopt; effect.
23-916. Contracts or liabilities in excess of budget prohibited.
23-917. Contracts or liabilities in excess of budget; county not liable.

(b) APPLICABLE TO ALL POLITICAL SUBDIVISIONS

(a) APPLICABLE ONLY TO COUNTIES

23-901 Act, how cited.

Sections 23-901 to 23-920 shall be known and may be cited as the County Budget Act of 1937.

Source: Laws 1937, c. 56, § 1, p. 224; C.S.Supp.,1941, § 26-2101; R.S. 1943, § 23-901; Laws 1945, c. 45, § 1, p. 212.

Preparation of general county budget is outlined in this and following sections. State ex rel. Agricultural Extension Service v. Miller, 182 Neb. 285, 154 N.W.2d 469 (1967).

23-902 Sections; applicability; fiscal year.

Sections 23-901 to 23-919 shall apply to all the counties of this state, except counties having a population of two hundred thousand or more inhabitants, and shall apply to counties of the latter class to the extent and under the conditions presented in section 23-920. The fiscal year of all counties, except as is provided for in section 23-920, shall begin July 1 and end June 30, and shall be the budget year.

Source: Laws 1937, c. 56, § 2, p. 224; C.S.Supp.,1941, § 26-2102; R.S. 1943, § 23-902; Laws 1945, c. 45, § 2, p. 212.

23-903 County budget; scope and contents.

The budget of the county shall present a complete financial plan for the period for which said budget is drawn, as hereinafter provided. It shall set forth (1) all proposed expenditures for the administration, operation and maintenance of all offices, departments, activities, funds and institutions of the county, (2) the actual or estimated operating deficits from prior years, (3) all interest and debt redemption charges during the period covered by said budget, (4) all expenditures for capital projects to be undertaken or executed during the period covered by said budget, including expenditures for local improvements which may be paid for in whole or in part by special assessments and operating reserves, and (5) the anticipated income, including all fees, license taxes, taxes

to be levied and all other means of financing the proposed expenditures for the period covered by said budget; *Provided, however*, in counties having a population of two hundred thousand or more inhabitants, sections 23-901 to 23-919 shall not apply to any matters connected with the foreclosure of taxes and the county board can at any time appropriate, from the unexpended balances out of the general fund, the sums of money necessary to carry through such a tax foreclosure action or actions.

Source: Laws 1937, c. 56, § 3, p. 225; Laws 1939, c. 24, § 1, p. 124; C.S.Supp.,1941, § 26-2107; R.S.1943, § 23-903; Laws 1945, c. 46, § 1, p. 220; Laws 1947, c. 69, § 1, p. 220.

County Budget Act has no application to a claim filed to recover invalid special assessments paid to county. McClary v. County of Dodge, 176 Neb. 627, 126 N.W.2d 849 (1964).

Act contemplates that allowance of valid claims may result in deficits. Becker v. County of Platte, 155 Neb. 180, 50 N.W.2d 814 (1952).

23-904 County budget document; three parts.

The budget document, setting forth the financial plan of the county for the period covered by said budget, shall embrace three parts, the nature and contents of which shall be as hereinafter set out.

Part I shall consist of a budget message prepared by the budget-making authority, as provided for hereinafter, which shall outline the fiscal policy of the county for the period covered by said budget, describing in connection therewith the important features of the budget plan. It shall also embrace a general budget summary, setting forth the aggregate figures of the budget in such a manner as to show the balanced relations between the total proposed expenditures and operating reserves and the total anticipated income, including all fees, license taxes, taxes to be levied, and all other sources of revenue, contrasted with the corresponding figures for the last two completed fiscal years. The general budget summary shall be supported by explanatory schedules or statements classifying the expenditures contained therein by offices, departments, activities and funds and the income by offices, departments, activities and funds.

Part II shall embrace the detailed budget estimates, both of expenditures and revenue, as provided for in section 13-504. It shall also include statements of the bonded indebtedness of the county, if any, showing the debt redemption requirements, the debt authorized and unissued, the condition of the sinking funds, the borrowing capacity, and a summary, to be furnished by the county treasurer to the budget-making authority, of the uncollected taxes arising from the last three annual levies. In addition thereto it shall contain any statements relative to the financial plan which the budget-making authority may deem advisable or which may be required by the county boards.

Part III shall embrace complete drafts of the resolutions or motions required to give legal sanction to the financial plan when adopted by the county board. These resolutions or motions shall include an appropriation resolution or motion authorizing, by spending agencies and by funds, all expenditures of the local government for the period covered by said budget and such other resolutions or motions as may be required to provide the income necessary to finance the budget.

Source: Laws 1937, c. 56, § 4, p. 225; Laws 1939, c. 24, § 2, p. 125; C.S.Supp.,1941, § 26-2104; R.S.1943, § 23-904; Laws 1945, c. 45, § 4, p. 213; Laws 1969, c. 145, § 30, p. 690.

23-905 County budget; budget document; forms; preparation; Auditor of Public Accounts; duties; expenses.

The form of the county budget and the form of the budget document, as required by the County Budget Act of 1937, shall be formulated by the Auditor of Public Accounts and the Attorney General. The Auditor of Public Accounts shall draft the forms and act in an advisory capacity in the preparation of the budget and may authorize the use of computer equipment and processing in the preparation of the budget. He or she shall transmit copies of the forms to the county clerk of each county in the state on or before July 15 of each year. Any hospital established pursuant to section 23-3501 may file its budget on an accrual basis. The budget document form shall include such estimate blanks for the various offices and departments of the county and such other additional forms as the Auditor of Public Accounts or the Attorney General deems necessary in the computation and preparation of the county budget. The expense of printing and transmitting the required copies to the counties by the Auditor of Public Accounts shall be borne by the state and included in the proper appropriation.

Source: Laws 1939, c. 24, § 2, p. 126; C.S.Supp.,1941, § 26-2104; R.S. 1943, § 23-905; Laws 1945, c. 45, § 5, p. 214; Laws 1987, LB 183, § 2; Laws 1995, LB 366, § 1; Laws 2000, LB 692, § 5.

23-906 Budget-making authority, how constituted; budget, when prepared; contents; notice of hearing.

In each county the finance committee of the county board shall constitute the budget-making authority unless the board, in its discretion, designates or appoints one of its own members or the county comptroller, the county manager, or other qualified person as the budget-making authority. If he or she will accept the appointment, another county official may be appointed as the budget-making authority. For the performance of this additional responsibility, the county official accepting the appointment may receive such additional salary as fixed by the county board.

On or before August 1, the budget-making authority shall prepare a county budget document, in the form required by sections 23-904 and 23-905, for the fiscal year and transmit the document to the county board.

A summary of the budget, in the form required by section 23-905, showing for each fund (1) the requirements, (2) the outstanding warrants, (3) the operating reserve to be maintained, (4) the cash on hand at the close of the preceding fiscal year, (5) the revenue from sources other than taxation, (6) the amount to be raised by taxation, and (7) the amount raised by taxation in the preceding fiscal year, together with a notice of a public hearing to be had with respect to the budget before the county board, shall be published once at least five days before the date of hearing in some legal newspaper published and of general circulation in the county or, if no such legal newspaper is published, in some legal newspaper of general circulation in the county.

Source: Laws 1937, c. 56, § 5, p. 226; Laws 1939, c. 24, § 3, p. 126; C.S.Supp.,1941, § 26-2105; R.S.1943, § 23-906; Laws 1945, c. 45, § 6, p. 215; Laws 1990, LB 874, § 1; Laws 1991, LB 178, § 1; Laws 2002, LB 1018, § 1.

23-907 Hearing; duty of county board.

Final action shall not be taken on the proposed budget by the county board until after at least one public hearing has been held thereon by the board, as provided in sections 23-904 to 23-906. It shall be the duty of the county board to arrange for and hold such hearing. A copy of said budget document shall be available at the office of the clerk for public inspection from and after its transmission to the county board by the budget-making authority as provided in section 23-906.

Source: Laws 1937, c. 56, § 6, p. 226; Laws 1939, c. 24, § 4, p. 127; C.S.Supp.,1941, § 26-2106.

23-908 Budget revision; power of county board; hearing.

The county board shall consider the budget document, as submitted to it by the budget-making authority, of the county, and may, in its discretion, revise, alter, increase or decrease the items contained in the budget, but not without first having a hearing with the office or department affected; *Provided, however*, that when it shall increase the total proposed expenditures of the budget it shall also increase the total anticipated income so that the total means of financing the budget shall at least equal in amount the aggregate proposed expenditures, including the operating reserve.

Source: Laws 1937, c. 56, § 7, p. 227; Laws 1939, c. 24, § 5, p. 128; C.S.Supp.,1941, § 26-2107; R.S.1943, § 23-908; Laws 1945, c. 45, § 7, p. 216.

The power of a county board to reduce requests submitted by various offices does not give the county board the authority to budget a particular office out of existence or to unduly hinder an officer in the conduct of his or her duties. State ex rel. Garvey v. County Bd. of Comm. of Sarpy County, 253 Neb. 694, 573 N.W.2d 747 (1998).

This section does not give a county board the authority to budget a particular office out of existence or to unduly hinder the officer in the conduct of his duties. Meyer v. Colin, 204 Neb. 96, 281 N.W.2d 737 (1979).

This section confers authority to revise, alter, increase, or decrease general county budget documents. State ex rel. Agricultural Extension Service v. Miller, 182 Neb. 285, 154 N.W.2d 469 (1967).

Under facts recited, county was liable for reasonable value of services of auditor making investigation. Campbell v. Douglas County, 142 Neb. 773, 7 N.W.2d 764 (1943).

23-909 Budget; when adopted; duty of county board.

On or before September 20 of each year, the county board shall adopt the budget and appropriate the several amounts specified in the budget for the several departments, offices, activities, and funds of the county for the period to which the budget applies as provided hereinbefore.

Source: Laws 1937, c. 56, § 7, p. 227; Laws 1939, c. 24, § 5, p. 128; C.S.Supp.,1941, § 26-2107; R.S.1943, § 23-909; Laws 1945, c. 45, § 8, p. 216; Laws 1993, LB 734, § 30; Laws 1995, LB 452, § 6.

23-910 Budget; income from taxation; how determined; estimated revenue; deduction.

The total amount provided in the budget to be raised by taxation shall in no instance exceed the amount of taxes authorized by law to be levied during that year, including the amounts necessary to meet outstanding indebtedness, as evidenced by bonds, coupons, or warrants regularly issued. No changes shall be made in the budget after its adoption, except as provided by sections 13-511 and 23-918. In arriving at the amounts required to be raised by taxation for each fund, the total requirements, the outstanding warrants, and the operating reserve shall be added and from such total shall be deducted the revenue from

sources other than taxation and the cash on hand on June 30. The operating reserve in no event shall be more than fifty percent of the total expenditures for the fund during the last completed fiscal year. The income of the county, as estimated in the budget, shall be and become applicable in the amounts and according to the funds specified in the budget for the purpose of meeting the expenditures as contemplated and set forth in the budget.

Source: Laws 1937, c. 56, § 7, p. 227; Laws 1939, c. 24, § 5, p. 128; C.S.Supp.,1941, § 26-2107; R.S.1943, § 23-910; Laws 1945, c. 45, § 9, p. 216; Laws 1999, LB 86, § 12.

23-911 Budget; income from taxation; limitation.

The amounts required to be raised by taxation for the various offices, departments, activities, and funds of the county, as provided in said budget as adopted, shall not exceed the existing statutory or constitutional limitations relating thereto, and shall be the amount levied by the county board for the purposes designated in said budget.

Source: Laws 1937, c. 56, § 7, p. 227; Laws 1939, c. 24, § 5, p. 130; C.S.Supp.,1941, § 26-2107.

23-912 Budget; income from taxation; deemed appropriated.

The funds to be raised by taxation or otherwise, as provided and allowed in said budget, for the various offices, departments, activities, and funds of the county shall, upon the adoption of the budget, be deemed to be and be appropriated to the various offices, departments, activities, and funds as provided in said budget, and shall be used for no other purpose.

Source: Laws 1937, c. 56, § 7, p. 228; Laws 1939, c. 24, § 5, p. 130; C.S.Supp.,1941, § 26-2107.

23-913 Budget summary; contents; filing.

The county board shall file with the county clerk the complete budget document, which shall be in the form provided for in sections 23-904 and 23-905. A copy thereof shall also be filed with the Auditor of Public Accounts within thirty days after its adoption. The budget document shall show, in addition to the figures set forth in the general budget summary, the changes made by the county board in the course of its review, revision, and adoption of the budget. It shall also show the tax rate necessary to finance the budget as adopted.

Source: Laws 1937, c. 56, § 7, p. 228; Laws 1939, c. 24, § 5, p. 130; C.S.Supp.,1941, § 26-2107; R.S.1943, § 23-913; Laws 1945, c. 45, § 10, p. 217; Laws 1993, LB 734, § 31.

23-914 Unexpended balances; expenditure; limitation.

On and after July 1, and until the adoption of the budget by the county board in September, the county board may expend any balance of cash on hand in any fund for the current expenses of the county payable from such fund, but not to exceed such proportion of the total amount expended under the last budget for such fund in the equivalent period of the prior budget year to the total

amount budgeted for such fund. Such expenditures shall be charged against the appropriation for such fund as provided in the budget when adopted.

Source: Laws 1939, c. 24, § 5, p. 130; C.S.Supp.,1941, § 26-2107; R.S. 1943, § 23-914; Laws 1945, c. 45, § 11, p. 217; Laws 1993, LB 734, § 32.

23-915 Budget; failure of county board to adopt; effect.

If for any reason the county board fails or neglects in any year to make the appropriation for the support, operation and maintenance of the county government for the fiscal year, then ninety percent of the several amounts appropriated in the last budget for the objects and purposes therein specified, insofar as the same shall relate to the support, operation and maintenance of the county government and the administration thereof, shall be deemed to be appropriated for the fiscal year for the several objects and purposes as specified in the said last budget.

Source: Laws 1937, c. 56, § 8, p. 228; Laws 1939, c. 24, § 6, p. 131; C.S.Supp.,1941, § 26-2108; R.S.1943, § 23-915; Laws 1945, c. 45, § 12, p. 218.

23-916 Contracts or liabilities in excess of budget prohibited.

After the adoption of the county budget, no officer, department or other expending agency shall expend or contract to be expended any money, or incur any liability, or enter into any contract which, by its terms, involves the expenditure of money not provided for in the budget, or which involves the expenditure of any money for any of the purposes for which provision is made in the budget in excess of the amounts provided in said budget for such office, department or other expending agency, or purpose, for such fiscal year. Any contract, verbal or written, made in violation of this section shall be null and void as to the county, and no money belonging thereto shall be paid thereon.

Source: Laws 1937, c. 56, § 9, p. 228; C.S.Supp.,1941, § 26-2109.

This section does not apply to contracts executed by a county board of commissioners. Thiles v. County Board of Sarpy County, 189 Neb. 1, 200 N.W.2d 13 (1972).

Prohibitions of this section relate to time contract is entered into or liability incurred. Becker v. County of Platte, 155 Neb. 180, 50 N.W.2d 814 (1952).

23-917 Contracts or liabilities in excess of budget; county not liable.

After the adoption of the county budget, no county shall be liable, either on any contract, implied contract or on any obligation arising by operation of law, for any merchandise, machinery, materials, supplies or other property delivered to or for any services rendered such county in pursuance of any contract entered into by or on behalf of such county in violation of the provisions of section 23-916.

Source: Laws 1937, c. 56, § 10, p. 229; C.S.Supp.,1941, § 26-2110.

This section is applicable when contract is in violation of preceding section. Becker v. County of Platte, 155 Neb. 180, 50 N.W.2d 814 (1952).

23-918 Emergencies; additional appropriations; loans; tax authorized.

The county board may, during the fiscal year, make additional appropriations or increase existing appropriations to meet emergencies in case of such unanticipated requirements as are essential to the preservation and mainte-

nance within the county of the administration of justice, the public safety, the public welfare, and the public health, the funds therefor to be provided from temporary loans. A resolution, setting forth the nature of such emergency, the amount of the additional or increased appropriations required, and the source of obtaining the funds to provide for such appropriations, shall be entered on the proceedings of the county board. Temporary loans, when made, shall be approved by a two-thirds vote of the county board. Such temporary loans shall be repaid from such sources as may be available or, if no other sources are available, by an annual levy of not to exceed seven cents on each one hundred dollars upon the taxable value of all the taxable property of such county. Such tax levy, together with the annual levy for any succeeding year, shall not exceed the existing statutory or constitutional limitation applicable to levies for county purposes.

Source: Laws 1937, c. 56, § 11, p. 229; Laws 1939, c. 24, § 7, p. 131; C.S.Supp.,1941, § 26-2111; R.S.1943, § 23-918; Laws 1945, c. 45, § 13, p. 218; Laws 1953, c. 287, § 50, p. 959; Laws 1979, LB 187, § 124; Laws 1992, LB 719A, § 108.

23-919 Violations; penalty; liability to county.

Any official, employee or member of the county board violating the provisions of sections 23-901 to 23-918, shall be guilty of a Class IV misdemeanor. As part of the judgment of conviction, the court shall forfeit the term and tenure of the office or the employment of the person so convicted and shall order his removal from his said office or employment. Any vacancy arising by reason of said forfeiture and removal shall be filled as provided by law in the case of a vacancy in said office for any other cause. Any member of the county board or any other official whose duty it is to allow claims and issue warrants therefor, or to make purchases, incur indebtedness, enter into contracts for or on behalf of the county, who issues warrants or evidences of indebtedness, or makes any purchase, incurs any indebtedness or enters into any contract for or on behalf of the county contrary to the provisions of said sections, shall be liable to the county for such violations in the full amount of such expenditures, and for the full amount which the county may be required to pay by reason of any purchase made, indebtedness incurred or contract made contrary to the provisions of said sections, whether the liability of the county to pay for such supplies, materials, merchandise, equipment or services is based upon said contract or upon quasi-contract, or upon an obligation arising by operation of law, and recovery may be had against the bondsman of such official for said amounts. Any county treasurer or other official whose duty it is to pay warrants and evidences of indebtedness, who shall pay such warrants and evidences of indebtedness contrary to the provisions of said sections, shall likewise be liable to the county for such violations in the full amount of such expenditures, and recovery may be had against his bondsman for said amount. Suit may be brought either by the county or by any taxpayer thereof for the benefit of the county for any amount for which any official, employee or member of the county board may be liable, as provided in this section.

Source: Laws 1937, c. 56, § 12, p. 229; C.S.Supp.,1941, § 26-2112; R.S.1943, § 23-919; Laws 1977, LB 40, § 94.

County is protected against deficits resulting from claims for which county was not liable. Becker v. County of Platte, 155 Neb. 180, 50 N.W.2d 814 (1952).

23-920 Counties having 200,000 population or more; county hospitals; fiscal year; change of fiscal year.

In counties having two hundred thousand or more inhabitants, the fiscal year shall begin January 1 and end December 31. Any such county may by an affirmative vote of a majority of all the members of the county board elect to change its fiscal year from a period of twelve months commencing January 1 to a period commencing July 1, and to become subject to all the terms of sections 23-901 to 23-919. Any county hospital operating under sections 23-3501 to 23-3527 may, by an affirmative vote of a majority of the members of the board of trustees of such facility, elect to change its fiscal year to any period of twelve months for determining and carrying on its financial affairs.

Source: Laws 1945, c. 45, § 14, p. 219; Laws 1969, c. 145, § 31, p. 691; Laws 1993, LB 734, § 33.

(b) APPLICABLE TO ALL POLITICAL SUBDIVISIONS

23-921 Transferred to section 13-502.

23-922 Transferred to section 13-503.

23-923 Transferred to section 13-504.

23-924 Transferred to section 13-505.

23-925 Transferred to section 13-506.

23-926 Transferred to section 13-507.

23-927 Transferred to section 13-508.

23-927.01 Transferred to section 13-509.

23-928 Transferred to section 13-510.

23-929 Transferred to section 13-511.

23-930 Transferred to section 13-512.

23-931 Transferred to section 13-513.

23-932 Transferred to section 13-514.

23-933 Transferred to section 13-501.

23-934 Transferred to section 13-606.

ARTICLE 10

LIABILITY OF COUNTIES FOR MOB VIOLENCE

Section
23-1001. Repealed. Laws 1969, c. 138, § 28.
23-1002. Repealed. Laws 1969, c. 138, § 28.
23-1003. Repealed. Laws 1969, c. 138, § 28.
23-1004. Repealed. Laws 1969, c. 138, § 28.
23-1005. Repealed. Laws 1969, c. 138, § 28.
23-1006. Repealed. Laws 1969, c. 138, § 28.
23-1007. Repealed. Laws 1969, c. 138, § 28.

23-1001 Repealed. Laws 1969, c. 138, § 28.

23-1002 Repealed. Laws 1969, c. 138, § 28.

23-1003 Repealed. Laws 1969, c. 138, § 28.

23-1004 Repealed. Laws 1969, c. 138, § 28.

23-1005 Repealed. Laws 1969, c. 138, § 28.

23-1006 Repealed. Laws 1969, c. 138, § 28.

23-1007 Repealed. Laws 1969, c. 138, § 28.

23-1008 Repealed. Laws 1969, c. 138, § 28.

23-1009 Repealed. Laws 1969, c. 138, § 28.

ARTICLE 11

SALARIES OF COUNTY OFFICERS

Cross References

For salaries of other officers paid by counties:
Bailiffs, see section 24-350.
County board of mental health, members and physician, see section 71-915.
County clerk, additional allowance, see sections 23-1401 and 23-1405.
County comptroller, see section 23-1405.
County visiting nurse or home health nurse, see section 71-1637.
Deputies, see section 23-1704.04.
Election commissioners and deputies, see section 32-217.
Elevator operator in counties over 200,000 inhabitants where jail is situated above the ground floor, see section 47-112.
Highway superintendent, see sections 39-1501 and 39-1502.
Matron of county jail, see section 47-111.
Physician to the jail, see section 47-110.

Section

23-1101 Repealed. Laws 1953, c. 63, § 6.

23-1102 Repealed. Laws 1953, c. 63, § 6.

23-1103 Repealed. Laws 1953, c. 63, § 6.

23-1104 Repealed. Laws 1953, c. 63, § 6.

23-1105 Repealed. Laws 1953, c. 63, § 6.

23-1106 Repealed. Laws 1953, c. 63, § 6.

23-1107 Repealed. Laws 1953, c. 63, § 6.

23-1108 Repealed. Laws 1953, c. 63, § 6.

23-1108.01 Repealed. Laws 1953, c. 63, § 6.

23-1108.02 Repealed. Laws 1953, c. 63, § 6.

23-1108.03 Repealed. Laws 1953, c. 63, § 6.

23-1109 Repealed. Laws 1953, c. 63, § 6.

23-1110 Repealed. Laws 1953, c. 63, § 6.

23-1110.01 Repealed. Laws 1953, c. 63, § 6.

23-1110.02 Repealed. Laws 1953, c. 63, § 6.

23-1111 County officers; clerks and assistants.

The county officers in all counties shall have the necessary clerks and assistants for such periods and at such salaries as they may determine with the approval of the county board, whose salaries shall be paid out of the general fund of the county.

Source: Laws 1943, c. 90, § 11, p. 302.

This section does not allow a county board to arbitrarily reduce salaries recommended by an elected officer. State ex rel. Garvey v. County Bd. of Comm. of Sarpy County, 253 Neb. 694, 573 N.W.2d 747 (1998).

Absent the existence of a labor organization as defined by section 48-801, in most instances elected officials are authorized in the first instance to hire their own employees, set their salaries, and prescribe their terms and conditions of employment. Sarpy Co. Pub. Emp. Assn. v. County of Sarpy, 220 Neb. 431, 370 N.W.2d 495 (1985).

This section requiring the approval of salaries by the County Board does not allow the Board to arbitrarily reduce the salaries recommended by the elected officers in their budget. Meyer v. Colin, 204 Neb. 96, 281 N.W.2d 737 (1979).

County judge is authorized to fix the salary of the clerk of the county court. Bass v. County of Saline, 171 Neb. 538, 106 N.W.2d 860 (1960).

23-1112 County officers; mileage; rate; amount; allowance.

When it is necessary for any county officer or his or her deputy or assistants, except any county sheriff or his or her deputy, to travel on business of the county, he or she shall be allowed mileage at the rate per mile allowed by section 81-1176 for each mile actually and necessarily traveled by the most direct route if the trip or trips are made by automobile. If travel by rail or bus is economical and practical, he or she shall be allowed only the actual cost of rail or bus transportation upon the presentation of his or her bill for the same accompanied by a proper voucher to the county board of his or her county in like manner as is provided for as to all other claims against the county.

Source: Laws 1943, c. 90, § 12, p. 302; R.S.1943, § 23-1112; Laws 1947, c. 71, § 1, p. 228; Laws 1953, c. 58, § 1, p. 196; Laws 1957, c. 70, § 1, p. 294; Laws 1959, c. 84, § 1, p. 384; Laws 1967, c. 125, § 1, p. 400; Laws 1973, LB 338, § 1; Laws 1974, LB 625, § 1; Laws 1978, LB 691, § 1; Laws 1980, LB 615, § 1; Laws 1981, LB 204, § 25; Laws 1985, LB 393, § 16; Laws 1990, LB 893, § 1; Laws 1993, LB 697, § 1; Laws 1996, LB 1011, § 8.

23-1112.01 County officers; employees; use of automobile; allowance.

If a trip or trips included in an expense claim filed by any county officer or employee for mileage are made by personal automobile or otherwise, only one mileage claim shall be allowed at the rate established in section 81-1176, for each mile actually and necessarily traveled by the most direct route, regardless of the fact that one or more persons are transported in the motor vehicle. No charge for mileage shall be allowed when such mileage accrues while using any motor vehicle owned by the State of Nebraska or by a county.

Source: Laws 1957, c. 70, § 12, p. 304; Laws 1961, c. 88, § 4, p. 309; Laws 1967, c. 125, § 2, p. 401; Laws 1973, LB 338, § 2; Laws 1974, LB 615, § 2; Laws 1978, LB 691, § 2; Laws 1980, LB 615, § 2; Laws 1981, LB 204, § 26; Laws 1996, LB 1011, § 9.

23-1113 Repealed. Laws 1949, c. 40, § 9.

23-1113.01 Repealed. Laws 1949, c. 40, § 9.

23-1113.02 Repealed. Laws 1953, c. 63, § 6.

23-1113.03 Repealed. Laws 1953, c. 63, § 6.

23-1113.04 Repealed. Laws 1953, c. 63, § 6.

23-1114 County officers and deputies; salaries; fixed by county board; when.

(1) The salaries of all elected officers of the county shall be fixed by the county board prior to January 15 of the year in which a general election will be held for the respective offices.

(2) The salaries of all deputies in the offices of the elected officers and appointive veterans service officers of the county shall be fixed by the county board at such times as necessity may require.

Source: Laws 1953, c. 63, § 1, p. 204; Laws 1955, c. 72, § 1, p. 224; Laws 1959, c. 85, § 2, p. 391; Laws 1963, c. 118, § 1, p. 463; Laws 1971, LB 574, § 1; Laws 1973, LB 220, § 1; Laws 1975, LB 90, § 1; Laws 1986, LB 1056, § 1; Laws 1996, LB 1085, § 29.

Sheriff must pay all commissions to county treasurer for credit to the general fund. Muinch v. Hull, 181 Neb. 571, 149 N.W.2d 527 (1967).

Clerk of the county court is not a deputy within the meaning of this section. Bass v. County of Saline, 171 Neb. 538, 106 N.W.2d 860 (1960).

23-1114.01 County officers; salaries; classification of counties.

For the purpose of fixing the salaries of certain officers and their deputies, counties shall be classified as follows: Counties having a population of less than three thousand inhabitants, Class 1; three thousand and less than nine thousand inhabitants, Class 2; nine thousand and less than fourteen thousand inhabitants, Class 3; fourteen thousand and less than twenty thousand inhabitants, Class 4; twenty thousand and less than sixty thousand inhabitants, Class 5; sixty thousand and less than two hundred thousand inhabitants, Class 6; and counties of two hundred thousand inhabitants or more, Class 7.

Source: Laws 1961, c. 96, § 1, p. 324; Laws 1971, LB 856, § 1.

23-1114.02 County officers; salaries; Class 1 counties.

In counties of Class 1, the county clerk, treasurer, sheriff, attorney, and appointive full-time veterans service officer shall each receive a minimum annual salary of five thousand five hundred dollars, to be paid periodically as other county employees out of the general fund.

Source: Laws 1961, c. 96, § 2, p. 324; Laws 1967, c. 128, § 2, p. 410; Laws 1967, c. 126, § 1, p. 404; Laws 1967, c. 127, § 1, p. 406; Laws 1969, c. 164, § 1, p. 739; Laws 1971, LB 574, § 2; Laws 1972, LB 1157, § 1; Laws 1973, LB 220, § 2; Laws 1999, LB 272, § 6.

23-1114.03 County officers; salaries; Class 2 counties.

In counties of Class 2, the county clerk, assessor, treasurer, sheriff, attorney, and appointive full-time veterans service officer shall each receive a minimum annual salary of six thousand dollars, and in counties entitled by law to have a clerk of the district court, the clerk of the district court shall receive a minimum annual salary of fifty-four hundred dollars, to be paid periodically as other county employees out of the general fund.

Source: Laws 1961, c. 96, § 3, p. 325; Laws 1963, c. 113, § 6, p. 445; Laws 1967, c. 128, § 3, p. 410; Laws 1967, c. 127, § 2, p. 407;

Laws 1969, c. 164, § 2, p. 739; Laws 1971, LB 574, § 3; Laws 1972, LB 1157, § 2; Laws 1973, LB 220, § 3; Laws 1999, LB 272, § 7.

23-1114.04 County officers; salaries; Class 3 counties.

In counties of Class 3, the county clerk, assessor, treasurer, sheriff, attorney, appointive full-time veterans service officer, and the clerk of the district court shall each receive a minimum annual salary of six thousand five hundred dollars, to be paid periodically as other county employees out of the general fund.

Source: Laws 1961, c. 96, § 4, p. 325; Laws 1963, c. 113, § 7, p. 445; Laws 1967, c. 128, § 4, p. 410; Laws 1967, c. 127, § 3, p. 407; Laws 1969, c. 164, § 3, p. 739; Laws 1971, LB 574, § 4; Laws 1972, LB 1157, § 3; Laws 1973, LB 220, § 4; Laws 1999, LB 272, § 8.

23-1114.05 County officers; salaries; Class 4 counties.

In counties of Class 4, the county clerk, register of deeds, assessor, treasurer, sheriff, attorney, appointive full-time veterans service officer, and the clerk of the district court shall each receive a minimum annual salary of seventy-five hundred dollars, to be paid periodically as other county employees out of the general fund.

Source: Laws 1961, c. 96, § 5, p. 325; Laws 1967, c. 128, § 5, p. 411; Laws 1967, c. 127, § 4, p. 408; Laws 1969, c. 164, § 4, p. 740; Laws 1971, LB 575, § 5; Laws 1972, LB 1157, § 4; Laws 1973, LB 220, § 5; Laws 1999, LB 272, § 9.

23-1114.06 County officers; salaries; Class 5 counties.

In counties of Class 5, the county clerk, register of deeds, assessor, treasurer, sheriff, attorney, appointive full-time veterans service officer, and the clerk of the district court shall each receive a minimum annual salary of eight thousand dollars, to be paid periodically as other county employees out of the general fund.

Source: Laws 1961, c. 96, § 6, p. 325; Laws 1967, c. 128, § 6, p. 411; Laws 1967, c. 127, § 5, p. 408; Laws 1969, c. 164, § 5, p. 740; Laws 1971, LB 575, § 6; Laws 1972, LB 1157, § 5; Laws 1973, LB 220, § 6; Laws 1999, LB 272, § 10.

23-1114.07 County officers; salaries; Class 6 or 7 counties.

Members of the county board shall set their own annual salary to be paid monthly out of the general fund. Salaries of other officers, including appointive full-time veterans service officers, in counties of Class 6 or 7 shall be established by the county board, except that the county assessor in counties of Class 7 shall receive a minimum annual salary of twenty thousand dollars, to be paid periodically as other county employees out of the general fund.

Source: Laws 1961, c. 96, § 7, p. 325; Laws 1965, c. 106, § 1, p. 430; Laws 1967, c. 127, § 6, p. 408; Laws 1969, c. 164, § 6, p. 740; Laws 1971, LB 574, § 7; Laws 1972, LB 1157, § 6; Laws 1973, LB 220, § 7.

23-1114.08 County officers; minimum salaries; person occupying more than one office.

When the same person occupies more than one office in the same county, he shall receive only one minimum annual salary.

Source: Laws 1961, c. 96, § 8, p. 326.

23-1114.09 Deputies; one full-time; minimum salary.

The salary of one full-time deputy of the various county offices shall not be less than sixty-five percent of the county officer's salary. No full-time deputy shall, except for vacation and sick leave periods established by the county board, be entitled to such salary during any period of time that such deputy is not actually engaged in the performance of the official duties of a deputy.

Source: Laws 1961, c. 96, § 9, p. 326; Laws 1963, c. 119, § 1, p. 465; Laws 1969, c. 164, § 7, p. 740.

Salary of full-time deputy sheriff could not be fixed at less than minimum prescribed by law. Grace v. County of Douglas, 178 Neb. 690, 134 N.W.2d 818 (1965).

23-1114.10 Repealed. Laws 1963, c. 341, § 1.

23-1114.11 Repealed. Laws 1971, LB 33, § 1.

23-1114.12 Repealed. Laws 1971, LB 33, § 1.

23-1114.13 Repealed. Laws 1971, LB 33, § 1.

23-1114.14 Interpretation of sections.

Sections 23-1114.02 to 23-1114.07 and 23-1114.09 shall be so interpreted as to effectuate their general purpose, to provide, in the public interest, adequate compensation as therein provided for the county officers affected thereby and to give effect to such salaries as soon as same may become operative under the Constitution of the State of Nebraska.

Source: Laws 1969, c. 164, § 8, p. 741.

23-1114.15 Interpretation of sections.

Sections 23-1114 and 23-1114.02 to 23-1114.07 shall be interpreted so as to effectuate their general purpose, to provide, in the public interest, adequate compensation as therein provided for the members of the county board, and to give effect to such salaries as soon as the same may become operative under the Constitution of the State of Nebraska.

Source: Laws 1971, LB 574, § 8.

23-1114.16 Repealed. Laws 1988, LB 806, § 1.

23-1115 County officers; deputies; compensation.

When a county officer is compelled by the pressure of the business of the office to employ a deputy, the county commissioners may make a reasonable allowance to such a deputy.

Source: R.S.1866, c. 15, § 6, p. 128; R.S.1913, § 5742; C.S.1922, § 5071; C.S.1929, § 84-808; R.S.1943, (1987), § 84-808; Laws 1990, LB 821, § 2.

23-1115.01 Repealed. Laws 1959, c. 266, § 1.

23-1115.02 Repealed. Laws 1959, c. 266, § 1.

23-1115.03 Repealed. Laws 1961, c. 286, § 1.

23-1115.04 Repealed. Laws 1967, c. 126, § 6.

23-1115.05 Repealed. Laws 1971, LB 33, § 1.

23-1116 Repealed. Laws 1963, c. 339, § 1.

23-1117 Repealed. Laws 1959, c. 266, § 1.

23-1118 Employees of certain counties or municipal counties; retirement benefits; establish; approval of voters; contribution rates; funds; investment; employees, defined; reports.

(1)(a) Unless the county has adopted a retirement system pursuant to section 23-2329, the county board of any county having a population of one hundred fifty thousand inhabitants or more may, in its discretion and with the approval of the voters, provide retirement benefits for present and future employees of the county. The cost of such retirement benefits shall be funded in accordance with sound actuarial principles with the necessary cost being treated in the county budget in the same way as any other operating expense.

(b) Except as provided in subdivision (c) of this subsection, each employee shall be required to contribute, or have contributed on his or her behalf, an amount at least equal to the county's contribution to the cost of any such retirement program as to service performed after the adoption of such retirement program, but the cost of any benefits based on prior service shall be borne solely by the county.

(c) In a county or municipal county having a population of two hundred thousand or more inhabitants but not more than three hundred thousand inhabitants, the county or municipal county shall establish the employee and employer contribution rates to the retirement program for each year after July 15, 1992. The county or municipal county shall contribute at least an amount equal to each employee's mandatory contribution, if any, to the cost of any such retirement program and by January 1, 1996, shall be contributing one hundred fifty percent of each employee's mandatory contribution. The combined contributions of the county or municipal county and its employees to the cost of any such retirement program shall not exceed thirteen percent of the employees' salaries.

(2) Before the county board or council provides retirement benefits for the employees of the county or municipal county, such question shall be submitted at a regular general or primary election held within the county or municipal county, and in which election all persons eligible to vote for the officials of the county or municipal county shall be entitled to vote on such question, which shall be submitted in the following language: Shall the county board or council provide retirement benefits for present and future employees of the county or municipal county? If a majority of the votes cast upon such question are in favor of such question, then the county board or council shall be empowered to provide retirement benefits for present and future employees as provided in this section. If such retirement benefits for present and future county and municipal county employees are approved by the voters and authorized by the county

board or council, then the funds of such retirement system, in excess of the amount required for current operations as determined by the county board or council, may be invested and reinvested in the class of securities and investments described in section 30-3209.

(3) As used in this section, employees shall mean all persons or officers devoting more than twenty hours per week to employment by the county or municipal county, all elected officers of the county or municipal county, and such other persons or officers as are classified from time to time as permanent employees by the county board or council.

(4) The county or municipal county may pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the county or municipal county shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the Internal Revenue Code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The county or municipal county shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The county or municipal county shall pick up these contributions by a salary deduction either through a reduction in the cash salary of the member or a combination of a reduction in salary and offset against a future salary increase. Member contributions picked up shall be treated in the same manner and to the same extent as member contributions made prior to the date picked up.

(5)(a) Beginning December 31, 1998, and each December 31 thereafter, the chairperson of the county board or council with a retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code shall file with the Public Employees Retirement Board an annual report on such plan and shall submit copies of such report to the members of the Nebraska Retirement Systems Committee of the Legislature. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

(i) The number of persons participating in the retirement plan;

(ii) The contribution rates of participants in the plan;

(iii) Plan assets and liabilities;

(iv) The names and positions of persons administering the plan;

(v) The names and positions of persons investing plan assets;

(vi) The form and nature of investments;

(vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the county board of a county or council of the municipal county with a retirement plan established pursuant to this section shall cause to be prepared a quadrennial report and the chairperson shall file the same with the Public Employees Retirement Board and submit to the members of the Nebraska Retirement Systems Committee of the Legislature a copy of such report. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

Source: Laws 1961, c. 97, § 1, p. 327; Laws 1967, c. 257, § 3, p. 680; Laws 1967, c. 129, § 1, p. 412; Laws 1984, LB 216, § 1; Laws 1985, LB 353, § 2; Laws 1992, LB 672, § 30; Laws 1995, LB 369, § 1; Laws 1995, LB 574, § 30; Laws 1998, LB 1191, § 22; Laws 1999, LB 795, § 10; Laws 2001, LB 142, § 31.

ARTICLE 12

COUNTY ATTORNEY

Cross References

Constitutional provisions:
Election, when held, see Article XVII, section 4, Constitution of Nebraska.
Information by, authorized, see Article I, section 10, Constitution of Nebraska.
Legislature, provide for election, see Article IX, section 4, Constitution of Nebraska.
Term begins, see Article XVII, section 5, Constitution of Nebraska.
Attorney General, has same powers in county, see section 84-204.
Dead human bodies, issuance of death certificate, when, see section 71-605.
Duties and powers of county attorney in particular matters:
Forfeited recognizance, action upon, see Chapter 29, article 11.
Grand jury, prosecution before, see Chapter 29, article 14.
Information, prosecution by, see Chapter 29, article 16.
Inheritance tax, action to collect, see section 77-2029.
Monopolies, prosecution of, see section 59-828.
Quo warranto, see section 25-21,122.
Elected, when, see section 32-522.
Vacancy:
How filled, see section 32-567.
Possession and control of office by deputy, see section 32-563.

Section

Section

23-1201 County attorney; duties; services performed at request of Attorney General; additional compensation; reports.

(1) Except as provided in subdivision (2) of section 84-205 or if a person is participating in a pretrial diversion program established pursuant to sections 29-3601 to 29-3604 or a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07, it shall be the duty of the county attorney, when in possession of sufficient evidence to warrant the belief that a person is guilty and can be convicted of a felony or misdemeanor, to prepare, sign, verify, and file the proper complaint against such person and to appear in the several courts of the county and prosecute the appropriate criminal proceeding on behalf of the state and county. Prior to reaching a plea agreement with defense counsel, the county attorney shall consult with or make a good faith effort to consult with the victim regarding the content of and reasons for such plea agreement. The county attorney shall record such consultation or effort in his or her office file.

(2) It shall be the duty of the county attorney to prosecute or defend, on behalf of the state and county, all suits, applications, or motions, civil or criminal, arising under the laws of the state in which the state or the county is a party or interested. The county attorney may be directed by the Attorney General to represent the state in any action or matter in which the state is interested or a party. When such services require the performance of duties which are in addition to the ordinary duties of the county attorney, he or she shall receive such fee for his or her services, in addition to the salary as county attorney, as (a) the court shall order in any action involving court appearance or (b) the Attorney General shall authorize in other matters, with the amount of such additional fee to be paid by the state. It shall also be the duty of the county

attorney to appear and prosecute or defend on behalf of the state and county all such suits, applications, or motions which may have been transferred by change of venue from his or her county to any other county in the state. Any counsel who may have been assisting the county attorney in any such suits, applications, or motions in his or her county may be allowed to assist in any other county to which such cause has been removed. The county attorney shall file the annual inventory statement with the county board of county personal property in his or her possession as provided in sections 23-346 to 23-350. It shall be the further duty of the county attorney of each county, within three days from the calling to his or her attention of any violation of the requirements of the law concerning annual inventory statements from county officers, to institute proceedings against such offending officer and in addition thereto to prosecute the appropriate action to remove such county officer from office. When it is the county attorney who is charged with failure to comply with this section, the Attorney General of Nebraska may bring the action. It shall be the duty of the county attorney to make a report on the tenth day of each quarter to the county board which shall show final disposition of all criminal cases the previous quarter, criminal cases pending on the last day of the previous quarter, and criminal cases appealed during the past quarter. The county board in counties having less than two hundred thousand population may waive the duty to make such report.

Source: Laws 1885, c. 40, § 2, p. 216; Laws 1899, c. 6, § 1, p. 56; Laws 1905, c. 7, § 1, p. 59; Laws 1911, c. 6, § 1, p. 73; R.S.1913, § 5596; C.S.1922, § 4913; C.S.1929, § 26-901; Laws 1939, c. 28, § 6, p. 146; C.S.Supp.,1941, § 26-901; R.S.1943, § 23-1201; Laws 1957, c. 71, § 1, p. 305; Laws 1959, c. 87, § 1, p. 396; Laws 1959, c. 82, § 2, p. 373; Laws 1961, c. 98, § 1, p. 328; Laws 1979, LB 573, § 1; Laws 1983, LB 78, § 2; Laws 1990, LB 87, § 1; Laws 1997, LB 758, § 1; Laws 2003, LB 43, § 7.

Cross References

Definition of terms, see section 29-119.

1. Powers and duties
2. Expenses
3. Assistance
4. Miscellaneous

1. Powers and duties

Although the county attorney has a duty to represent the state in all matters arising under the laws of the state in which the state is a party or is interested, this duty is not an ordinary duty of the county attorney. A district court is authorized to award fees to a county attorney under subsection (2) of this section. Winter v. Department of Motor Vehicles, 257 Neb. 28, 594 N.W.2d 642 (1999).

It is the function of the county attorney under this section to enforce the penal provisions of the Nebraska statutes. State v. Houtwed, 211 Neb. 681, 320 N.W.2d 97 (1982).

A county attorney has no authority to prosecute city ordinance violations, nor to bring error proceedings in such cases. State v. Linn, 192 Neb. 798, 224 N.W.2d 539 (1974).

County attorney of county where crime was committed has duty to prosecute upon change of venue. State v. Furstenau, 167 Neb. 439, 93 N.W.2d 384 (1958).

County attorney's duties include all matters involving determination of inheritance tax. State ex rel. Nebraska State Bar Assn. v. Richards, 165 Neb. 80, 84 N.W.2d 136 (1957).

County attorney could receive money due county under court decree. State ex rel. Heintze v. County of Adams, 162 Neb. 127, 75 N.W.2d 539 (1956).

County attorney has choice of procedure in prosecuting juvenile offenders. Lingo v. Hann, 161 Neb. 67, 71 N.W.2d 716 (1955).

County attorney is not limited by the Juvenile Court Act in any way in his duty to file proper complaints against wrongdoers and prosecute the same. State v. McCoy, 145 Neb. 750, 18 N.W.2d 101 (1945).

Duties of county attorney and Attorney General are compared to show lack of authority of Attorney General to enter voluntary appearance in behalf of state. Anstine v. State, 137 Neb. 148, 288 N.W. 525 (1939).

Action brought by taxpayer against the individual members of a county board for dereliction of duty cannot be dismissed on motion by county attorney. Holt County v. Tomlinson, 98 Neb. 777, 154 N.W. 537 (1915).

County attorney may, if he has tried case, waive summons in error. Dakota County v. Bartlett, 67 Neb. 62, 93 N.W. 192 (1903).

County attorney cannot enter voluntary appearance and confess judgment against county. Resolution of board is insufficient authority. Custer County v. Chicago, B. & Q. R. R. Co., 62 Neb. 657, 87 N.W. 341 (1901).

County attorney must file informations for crime and prosecute all criminal cases in county. Dinsmore v. State, 61 Neb. 418, 85 N.W. 445 (1901).

County attorney may institute proceedings against a juvenile either in the juvenile or district courts. Kennedy v. Sigler, 397 F.2d 556 (8th Cir. 1968).

The county attorney may prosecute civil commitments of mentally ill persons. Doremus v. Farrell, 407 F.Supp. 509 (D. Neb. 1975).

2. Expenses

County board, in sound discretion, may allow actual necessary expenses of county attorney in investigating and prosecuting actions. Berryman v. Schalander, 85 Neb. 281, 122 N.W. 990 (1909).

County attorney may bind county for reasonable and necessary expenses incident to suit. Christner v. Hayes County, 79 Neb. 157, 112 N.W. 347 (1907).

3. Assistance

An assistant may be a nonresident, but must qualify. Goldsberry v. State, 92 Neb. 211, 137 N.W. 1116 (1912).

Private counsel may assist only in felony cases, when procured by county attorney under direction of court. McKay v. State, 90 Neb. 63, 132 N.W. 741 (1911).

4. Miscellaneous

A county is ''interested'' in criminal action against a county official within the meaning of subsection (2) of this section when a conviction could expose the county to liability or substantially impair the performance of an essential governmental function. Guenzel-Handlos v. County of Lancaster, 265 Neb. 125, 655 N.W.2d 384 (2003).

Where state and local purposes are commingled, the crucial issue turns upon a determination of whether the controlling purposes are state or local. Counties may be required to pay attorney's fees for one appointed to defend an indigent defendant. Kovarik v. County of Banner, 192 Neb. 816, 224 N.W.2d 761 (1975).

A public prosecutor, acting in good faith within the general scope of his authority in making a determination whether to file a criminal prosecution, is immune from suit for erroneous or negligent determination. Koch v. Grimminger, 192 Neb. 706, 223 N.W.2d 833 (1974).

A person employed and holding himself out as county attorney is such officer de facto, where not qualified. Gragg v. State, 112 Neb. 732, 201 N.W. 338 (1924).

''Prosecuting'' and ''county'' attorney are the same throughout the code. Bush v. State, 62 Neb. 128, 86 N.W. 1062 (1901).

23-1201.01 County attorney; residency; appointment of nonresident attorney, when; contract.

(1) Except as provided in subsection (2) of this section, a qualified person need not be a resident of the county when he or she files for election as county attorney, but if elected as county attorney, such person shall reside in a county for which he or she holds office, except that a county attorney serving in a county which does not have a city of the metropolitan, primary, or first class may reside in an adjoining Nebraska county.

(2) If there is no county attorney elected pursuant to section 32-522 or if a vacancy occurs for any other reason, the county board of such county may appoint a qualified attorney from any Nebraska county to the office of county attorney. In making such appointment, the county board shall negotiate a contract with the attorney, such contract to specify the terms and conditions of the appointment, including the compensation of the attorney, which compensation shall not be subject to sections 23-1114.02 to 23-1114.06.

Source: Laws 1943, c. 60, § 1, p. 234; R.S.1943, § 23-1201.01; Laws 1971, LB 109, § 1; Laws 1986, LB 812, § 2; Laws 1993, LB 468, § 1; Laws 1994, LB 76, § 541; Laws 1995, LB 669, § 1; Laws 1996, LB 1085, § 30; Laws 2003, LB 84, § 1.

Failure by a county attorney to reside in the county he or she holds office is not official misconduct. Residing in the county where one holds office as county attorney is not an official duty. Hynes v. Hogan, 251 Neb. 404, 558 N.W.2d 35 (1997).

23-1201.02 County attorney; counties of Class 4, 5, 6, or 7; qualifications; exception.

No person shall seek nomination or appointment for the office of county attorney in counties of Class 4, 5, 6, or 7, nor serve in that capacity unless he or she has been admitted to the practice of law in this state for at least two years next preceding the date such person would take office and has practiced law actively in this state during such two-year period, except that if no person who meets the requirements of this section has filed for or sought such office by the

filing deadline for nomination or by the deadline for applications for appointment, the provisions of this section shall not apply to any person seeking such office.

Source: Laws 1969, c. 142, § 1, p. 664; Laws 1993, LB 468, § 2.

Cross References

Classification of counties, see section 23-1114.01.

23-1202 County attorney; actions before magistrate; duties.

Each county attorney shall appear on behalf of the state before any magistrate, and prosecute all complaints made in behalf of the state of which any magistrate shall have jurisdiction, and he shall appear before any magistrate and conduct any criminal examination which may be had before such magistrate, and shall also prosecute all civil suits before such magistrate in which the state or county is a party or interested.

Source: Laws 1885, c. 40, § 3, p. 216; R.S.1913, § 5597; C.S.1922, § 4914; C.S.1929, § 26-902.

It is not the duty of the county attorney to appear and prosecute violator of village ordinance, where prosecution is not based upon violation of state law. State ex rel. Vannatter v. McDonald, 100 Neb. 332, 160 N.W. 95 (1916).

County attorney has full control of action. Rickley v. State, 65 Neb. 841, 91 N.W. 867 (1902).

23-1203 Opinions; civil cases; additional counsel; compensation.

The county attorney shall without fee or reward give opinions and advice to the board of county commissioners and other civil officers of their respective counties, when requested so to do by such board or officers, upon all matters in which the state or county is interested, or relating to the duty of the board or officers in which the state or county may have an interest; *Provided*, in all counties of this state the county board may employ such additional counsel in civil matters as it may deem necessary. Such attorney or attorneys shall counsel the board or county officers on such civil matters as the board may lay before him or them, and shall prosecute or defend, on behalf of the county or any of its officers, such civil actions or proceedings as the interests of the county may in their judgment require, and shall receive such reasonable compensation in each case as the board and such counsel may agree upon.

Source: Laws 1885, c. 40, § 4, p. 217; Laws 1895, c. 7, § 1, p. 73; R.S.1913, § 5598; C.S.1922, § 4915; C.S.1929, § 26-903; R.S. 1943, § 23-1203; Laws 1959, c. 88, § 1, p. 397.

Special attorneys to conduct tax foreclosure cases were employed pursuant to this section. Strawn v. County of Sarpy, 146 Neb. 783, 21 N.W.2d 597 (1946).

When petitioned by ten freeholders, the county board may employ such additional counsel in civil matters as it may deem necessary. County of Pierce v. Goff, 141 Neb. 514, 4 N.W.2d 222 (1942); Whedon v. Lancaster County, 80 Neb. 682, 114 N.W. 1102 (1908).

County board may hire attorney to collect judgment on contingent fee basis. Miles v. Cheyenne County, 96 Neb. 703, 148 N.W. 959 (1914).

County is not liable for services rendered on request of county attorney unless authorized or ratified by board. Card v. Dawes County, 71 Neb. 788, 99 N.W. 662 (1904).

23-1204 Deputies; appointment and compensation.

The county attorney may, with the approval and consent of the county board, appoint one or more deputies, who shall receive such compensation as shall be fixed by the county board, to assist him in the discharge of his duties.

Source: Laws 1885, c. 40, § 6, p. 217; Laws 1893, c. 2, § 1, p. 64; Laws 1901, c. 8, § 1, p. 57; R.S.1913, § 5599; Laws 1917, c. 108, § 1,

p. 278; Laws 1919, c. 62, § 1, p. 169; Laws 1921, c. 232, § 1, p. 830; C.S.1922, § 4916; Laws 1923, c. 41, § 1, p. 156; Laws 1927, c. 116, § 2, p. 326; C.S.1929, § 26-904; Laws 1943, c. 90, § 14, p. 302; R.S.1943, § 23-1204; Laws 1947, c. 73, § 2, p. 233; Laws 1947, c. 72, § 2, p. 230; Laws 1947, c. 62, § 5, p. 200; Laws 1949, c. 42, § 1(1), p. 144; Laws 1961, c. 99, § 1, p. 330.

Cross References

For minimum salary of deputies, see section 23-1114.09.

County attorney of Douglas County is authorized to appoint deputies to assist him in the discharge of his duties, and a deputy so appointed and qualified may sign a criminal information. Thompson v. O'Grady, 137 Neb. 641, 290 N.W. 716 (1940).

When appointed by county attorney, a duly qualified deputy may sign criminal information. Holland v. State, 100 Neb. 444, 160 N.W. 893 (1916).

In action for compensation as assistant, allegation in petition that attorney assisted county attorney under appointment of court is sufficient to show that services were procured by county attorney. Lear v. Brown County, 77 Neb. 230, 109 N.W. 174 (1906).

23-1204.01 Deputies; special; when; compensation.

The county attorney of any county may, under the direction of the district court, procure such assistance in any investigation or appearance or the trial of any person charged with a crime which is a felony, as he may deem necessary for the trial thereof, and such assistant or assistants shall be allowed such compensation for said services as the court shall determine, to be paid by order of the county treasurer, upon presenting to said board the certificate of the district judge before whom said cause was tried certifying to services rendered by such assistant or assistants and the amount of compensation.

Source: Laws 1885, c. 40, § 6, p. 217; Laws 1893, c. 2, § 1, p. 64; Laws 1901, c. 8, § 1, p. 57; R.S.1913, § 5599; Laws 1917, c. 108, § 1, p. 278; Laws 1919, c. 62, § 1, p. 169; Laws 1921, c. 232, § 1, p. 830; C.S.1922, § 4916; Laws 1923, c. 41, § 1, p. 156; Laws 1927, c. 116, § 2, p. 326; C.S.1929, § 26-904; Laws 1943, c. 90, § 14, p. 302; R.S.1943, § 23-1204; Laws 1947, c. 73, § 2, p. 233; Laws 1947, c. 72, § 2, p. 230; Laws 1947, c. 62, § 5, p. 200; Laws 1949, c. 42, § 1(2), p. 144; Laws 1969, c. 165, § 1, p. 741.

1. Appointment of special counsel
2. Effect of change of venue
3. Miscellaneous

1. Appointment of special counsel

In the prosecution of a felony case, the question of appointment of assistant counsel to aid the prosecution is addressed to the sound discretion of the court. Jackson v. State, 133 Neb. 786, 277 N.W. 92 (1938).

Application for appointment of counsel to assist in prosecution of criminal case is addressed to the sound discretion of the trial court and error cannot be predicated thereon in absence of showing of abuse of discretion. Dobry v. State, 130 Neb. 51, 263 N.W. 681 (1935).

Attorney may be appointed to assist in prosecution of felony, within discretion of court, on application of county attorney, and is not error in absence of showing abuse of discretion. Barr v. State, 114 Neb. 853, 211 N.W. 188 (1926); Baker v. State, 112 Neb. 654, 200 N.W. 876 (1924); Smith v. State, 109 Neb. 579, 191 N.W. 687 (1922).

Assistant attorney need not qualify and give bond nor take oath as deputy county attorney. Gragg v. State, 112 Neb. 732, 201 N.W. 338 (1924); Bush v. State, 62 Neb. 128, 86 N.W. 1062 (1901).

Court may appoint attorney in prosecution of misdemeanor. Goemann v. State, 100 Neb. 772, 161 N.W. 421 (1917).

It is the duty of the court to select impartial prosecutor to assist county attorney. Rogers v. State, 97 Neb. 180, 149 N.W. 318 (1914).

Attorney appointed to assist in prosecution may be nonresident but must qualify. Goldsberry v. State, 92 Neb. 211, 137 N.W. 1116 (1912).

Order permitting assistance of one employed privately should not be entered. McKay v. State, 90 Neb. 63, 132 N.W. 741 (1911).

Appointment after jury is passed for cause but before any peremptory challenges are used is valid. Johns v. State, 88 Neb. 145, 129 N.W. 247 (1910).

Appointment of counsel to assist in prosecution should be made before commencement of trial. Knights v. State, 58 Neb. 225, 78 N.W. 508 (1899).

2. Effect of change of venue

Attorney employed by county attorney to assist in prosecution is required to follow case on change of venue. Sands v. Frontier County, 42 Neb. 837, 60 N.W. 1017 (1894).

County from which venue is changed is liable for compensation of counsel appointed to assist in prosecution. Fuller v. Madison County, 33 Neb. 422, 50 N.W. 255 (1891).

3. Miscellaneous

An application for attorney fees and expenses must be granted where the record demonstrates that the amount requested was reasonable and there is no evidence or indication otherwise that the amount is unreasonable. This section does not create a presumption of validity regarding attorney fees and expenses. Schirber v. State, in re Patrick Thomas, 254 Neb. 1002, 581 N.W.2d 873 (1998).

23-1204.02 Repealed. Laws 1961, c. 99, § 2.

23-1204.03 Deputies; counties having a population of between 30,000 and 200,000 inhabitants; additional deputy; salary.

In counties having a population of more than thirty thousand inhabitants and not more than two hundred thousand inhabitants, there is hereby created the office of deputy county attorneys, and the county attorney of such county may at his discretion appoint additional deputy county attorneys for such county upon receiving the approval thereof by the county board. The salary of the additional deputy county attorneys, referred to in this section, shall be fixed by the county board.

Source: Laws 1893, c. 2, § 1, p. 64; Laws 1901, c. 8, § 1, p. 57; R.S.1913, § 5599; Laws 1917, c. 108, § 1, p. 278; Laws 1919, c. 62, § 1, p. 169; Laws 1921, c. 232, § 1, p. 830; C.S.1922, § 4916; Laws 1923, c. 41, § 1, p. 156; Laws 1927, c. 116, § 2, p. 326; C.S.1929, § 26-904; Laws 1943, c. 90, § 14, p. 302; R.S.1943, § 23-1204; Laws 1947, c. 73, § 2, p. 233; Laws 1947, c. 72, § 2, p. 230; Laws 1947, c. 62, § 5, p. 200; Laws 1949, c. 42, § 1(4), p. 144; Laws 1953, c. 56, § 2, p. 194.

23-1204.04 Deputies; bond.

The deputy county attorney in all counties, except as otherwise provided in section 23-1204.05, shall file a bond in the same manner and for the same amount required of the county attorney and be removable at the pleasure of the county attorney.

Source: Laws 1893, c. 2, § 1, p. 64; Laws 1901, c. 8, § 1, p. 57; R.S.1913, § 5599; Laws 1917, c. 108, § 1, p. 278; Laws 1919, c. 62, § 1, p. 169; Laws 1921, c. 232, § 1, p. 830; C.S.1922, § 4916; Laws 1923, c. 41, § 1, p. 156; Laws 1927, c. 116, § 2, p. 326; C.S.1929, § 26-904; Laws 1943, c. 90, § 14, p. 302; R.S.1943, § 23-1204; Laws 1947, c. 73, § 2, p. 233; Laws 1947, c. 72, § 2, p. 230; Laws 1947, c. 62, § 5, p. 200; Laws 1949, c. 42, § 1(5), p. 144.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

23-1204.05 Deputies; counties having a population of more than 200,000 inhabitants.

In counties whose population is more than two hundred thousand inhabitants, the county attorney may appoint a chief deputy county attorney and one or more deputy county attorneys. Before entering upon the duties of their offices, each of said deputies shall be required to give a bond for the faithful performance of the duties of such office in an amount to be fixed and approved by the judges of the district court.

Source: Laws 1893, c. 2, § 1, p. 64; Laws 1901, c. 8, § 1, p. 57; R.S.1913, § 5599; Laws 1917, c. 108, § 1, p. 278; Laws 1919, c. 62, § 1, p.

169; Laws 1921, c. 232, § 1, p. 830; C.S.1922, § 4916; Laws 1923, c. 41, § 1, p. 156; Laws 1927, c. 116, § 2, p. 326; C.S.1929, § 26-904; Laws 1943, c. 90, § 14, p. 302; R.S.1943, § 23-1204; Laws 1947, c. 73, § 2, p. 233; Laws 1947, c. 72, § 2, p. 230; Laws 1947, c. 62, § 5, p. 200; Laws 1949, c. 42, § 1(6), p. 144; Laws 1953, c. 59, § 1, p. 197; Laws 1967, c. 130, § 1, p. 414.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

23-1204.06 Deputies; grant program for termination of parental rights actions.

A grant program is established to reimburse counties for the personal service costs of deputy county attorneys associated with termination of parental rights actions resulting from Laws 1998, LB 1041. Counties in which a city of the metropolitan class or a city of the primary class is located are eligible for grants under this program. The Department of Health and Human Services shall administer the program. Counties receiving grants shall submit quarterly expenditure reports to the department.

Source: Laws 1998, LB 1041, § 47; Laws 2007, LB296, § 24.

23-1205 Acting county attorney; appointment; when authorized; compensation.

In the absence, sickness, or disability of the county attorney and his or her deputies, or upon request of the county attorney for good cause, the court may appoint an attorney to act as county attorney in any investigation, appearance, or trial, by an order to be entered upon the minutes of the court. Such attorney shall be allowed compensation for such services as the court shall determine, to be paid by order of the county treasurer, upon presenting to the county board the certificate of the judge before whom the cause was tried certifying to services rendered by such attorney and the amount of compensation.

Source: Laws 1885, c. 40, § 7, p. 218; R.S.1913, § 5600; C.S.1922, § 4917; C.S.1929, § 26-905; R.S.1943, § 23-1205; Laws 1969, c. 165, § 2, p. 742; Laws 2007, LB214, § 1.

District court is given authority to appoint an acting county attorney in the event of absence, sickness, or disability of county attorney. Stewart v. McCauley, 178 Neb. 412, 133 N.W.2d 921 (1965).

It is within the discretion of the court to appoint any attorney in lieu of disqualified county attorney, and ruling will not be disturbed unless discretion is abused. Quinton v. State, 112 Neb. 684, 200 N.W. 881 (1924).

Appointment where attorney refused to prosecute is proper. Spaulding v. State, 61 Neb. 289, 85 N.W. 80 (1901).

Information may be filed by substitute county attorney without infringing constitutional rights of accused. Korth v. State, 46 Neb. 631, 65 N.W. 792 (1896).

Appointment of another attorney is proper where county attorney had appeared for accused. Gandy v. State, 27 Neb. 707, 43 N.W. 747 (1889), 44 N.W. 108 (1889).

23-1206 Fees; prohibited; civil cases; when disqualified.

No prosecuting attorney shall receive any fee or reward from or on behalf of any prosecutor or other individual for services in any prosecution or business which it shall be his official duty to attend; nor shall he act or be concerned, as an attorney or counsel for either party, other than for the state or county, in any civil action depending upon the same state of facts upon which any criminal prosecution, commenced or prosecuted, shall depend, or depending upon the same state of facts, investigated by him, while acting as county coroner.

Source: Laws 1885, c. 40, § 8, p. 218; R.S.1913, § 5601; C.S.1922, § 4918; C.S.1929, § 26-906; Laws 1943, c. 56, § 1, p. 223.

Purpose of this section was to make certain that a county attorney should not be influenced by private interests. Stewart v. McCauley, 178 Neb. 412, 133 N.W.2d 921 (1965).

Purpose of the statute is to protect the public by making certain that the duties of county attorney are not influenced by private interest. Roach v. Roach, 174 Neb. 266, 117 N.W.2d 549 (1962).

County attorney is not entitled to attorney's fee taxed as costs in tax foreclosure action. State ex rel. Nebraska State Bar Assn. v. Conover, 166 Neb. 132, 88 N.W.2d 135 (1958).

Attorney's fee could not be allowed for services performed under Uniform Reciprocal Enforcement of Support Act. Rice v. Rice, 165 Neb. 778, 87 N.W.2d 408 (1958).

In civil action, disqualification of county attorney is waived unless objection thereto is made. Thompson v. Thompson, 151 Neb. 110, 36 N.W.2d 648 (1949).

Where attorney prepared petition for probate of deceased but withdrew his appearance, and appointment to assist in prosecution was made solely through county attorney, there was no disqualification. Jordan v. State, 101 Neb. 430, 163 N.W. 801 (1917).

County attorney cannot recover fee for services in civil action where criminal action was possible. Ress v. Shepherd, 84 Neb. 268, 120 N.W. 1132 (1909).

County attorney, who brought civil action, is not disqualified to prosecute criminal action based on same facts. Fitzgerald v. State, 78 Neb. 1, 110 N.W. 676 (1907).

23-1206.01 County attorney, deputies, and employees; employment restrictions; salary.

(1)(a) In counties having a population of two hundred thousand inhabitants or more, the county attorney and all deputy county attorneys shall devote their full time to the legal work of such county and shall not engage in the private practice of law directly or indirectly, nor shall any county attorney, deputy county attorney, or employee of the county attorney of any such county directly or indirectly refer any legal matter or civil or criminal litigation to any lawyer or either directly or indirectly recommend or suggest to any person the employment of any particular lawyer or lawyers to counsel in, conduct, defend, or prosecute any action, case, claim, demand, or legal proceeding, whether in litigation or otherwise. In counties having a population of two hundred thousand inhabitants or more, the county attorney may appoint deputy county attorneys to serve without pay and when so appointed shall not be subject to the provisions of this section.

(b) In counties with sixty thousand or more but less than one hundred thousand inhabitants, the county attorney shall receive a salary of not less than twenty-seven thousand five hundred dollars per annum.

(c) In counties with one hundred thousand or more but less than two hundred thousand inhabitants, the county attorney shall receive a salary of not less than thirty-two thousand five hundred dollars per annum. The county attorneys of such counties shall not engage in private practice. The deputy county attorneys in such counties may engage in private practice.

(2) In any county not specifically provided for under subsection (1) of this section, the county board may adopt a resolution not less than sixty days prior to the deadline for filing for the office of county attorney providing that the county attorney shall devote his or her full time to the legal work of the county and shall not engage in the private practice of law directly or indirectly and shall not directly or indirectly refer any legal matter or civil or criminal litigation to any lawyer nor directly or indirectly recommend or suggest to any person the employment of any particular lawyer or lawyers to counsel in, conduct, defend, or prosecute any action, case, claim, demand, or legal proceeding, whether in litigation or otherwise. The full-time county attorney shall receive an annual salary, to be set by the county board, to be paid periodically out of the general fund the same as the salaries of other employees, except that in a county having a population of twenty thousand inhabitants or more or when two or more contiguous counties jointly employ one county attorney and have a combined population of twenty thousand inhabitants or more, the

county attorney for the county or counties shall receive an annual salary of not less than twenty thousand dollars.

Source: Laws 1957, c. 72, § 1, p. 307; Laws 1959, c. 89, § 1, p. 398; Laws 1974, LB 774, § 1; Laws 1981, LB 21, § 1; Laws 1995, LB 285, § 1.

23-1206.02 County attorney, deputies, and employees; counties having a population of more than 200,000 inhabitants; private practice; illegal reference; malfeasance; penalty.

Any county attorney, deputy county attorney, or any employee of the county attorney in any county having a population of more than two hundred thousand inhabitants violating the provisions of section 23-1206.01 shall be guilty of malfeasance in office and shall, upon conviction thereof, be fined not more than five hundred dollars or imprisoned in the county jail not more than six months, or both such a fine and imprisonment, and in addition shall vacate his office.

Source: Laws 1957, c. 72, § 2, p. 307.

23-1207 Money or property received; county attorney; duties.

(1) It shall be the duty of the county attorney, whenever he or she shall receive any money or other property in his or her official capacity, to give to the person paying or depositing such money or other property duplicate receipts, one of which shall be filed by such person with the county clerk.

(2) Whenever any such money is received by the county attorney, he or she shall carefully manage it and may, when the money cannot immediately be paid out to its rightful owner, deposit the money in interest-bearing accounts in insured banking or savings institutions. Any interest accrued from such deposit shall be paid over to the county treasurer to be credited to the county general fund, except that when the funds so deposited belonged to a deceased person whose personal representative has not yet been appointed by a court of competent jurisdiction, then the interest accruing on such money shall be paid to the estate of such person after the appointment of a personal representative and upon order of the court.

(3) Any property other than money which is received by the county attorney shall be held by him or her in safekeeping until claimed by the rightful owner or, if there is a dispute as to the ownership of such property, until ordered by a court of competent jurisdiction to give possession of the property to some person.

Source: Laws 1885, c. 40, § 9, p. 219; R.S.1913, § 5602; C.S.1922, § 4919; C.S.1929, § 26-907; R.S.1943, § 23-1207; Laws 1979, LB 179, § 1.

23-1208 Grand jury and court sittings; attendance and duties.

Whenever the county attorney is required by the grand jury of any court sitting in his county, it shall be his duty to attend for the purpose of examining witnesses in their presence, or of giving them advice in any legal matter, and to issue subpoenas and other writs of process; to bring in witnesses and to draw

up bills of indictment; but he shall not be present with the grand jury when an indictment is being considered and found by said grand jury.

Source: Laws 1885, c. 40, § 10, p. 219; R.S.1913, § 5603; C.S.1922, § 4920; C.S.1929, § 26-908.

23-1209 Detectives; employment; when authorized; compensation.

In counties having a population exceeding sixty thousand inhabitants, and not more than two hundred thousand inhabitants, there may be spent under the direction and control of the county attorney of said county a sum of money not exceeding five hundred dollars in any one year, to be paid out of the general fund of the county, for the employment of a detective or detectives, the same to be appointed by the county attorney at such rates of compensation per day as may be fixed by said officer, and said appointment may be revoked by him at any time. In counties having a population exceeding two hundred thousand inhabitants, there may be spent under the direction and control of the county attorney of said county a sum of money not exceeding fifteen hundred dollars in any one year, to be paid out of the general fund of the county, for the employment of a detective or detectives, the same to be appointed by the county attorney at such rates of compensation per day as may be fixed by said officer, and said appointment may be revoked by him at any time.

Source: Laws 1909, c. 8, § 1, p. 64; R.S.1913, § 5604; Laws 1919, c. 64, § 1, p. 172; C.S.1922, § 4921; C.S.1929, § 26-909; R.S.1943, § 23-1209; Laws 1969, c. 146, § 2, p. 703.

23-1210 Coroner; duties; county attorney shall perform; expenses; delegation of duties.

(1) The county attorney shall perform all of the duties enjoined by law upon the county coroner and the county attorney shall be the ex officio county coroner. The county attorney shall receive no additional fees for the performance of duties prescribed by statutes for county coroner but shall be reimbursed for all actual necessary expenses incurred by him or her in the performance of such duties with reimbursement for mileage to be made at the rate provided in section 81-1176.

(2) The county attorney may delegate to the county sheriff, deputy county sheriff, or any other peace officer that part of the coroner's duties as now prescribed by statute which relates to viewing dead bodies and serving papers, except that in cases when there may be occasion to serve papers upon the sheriff, the county attorney may delegate such duty to the county clerk.

Source: Laws 1915, c. 224, § 1, p. 493; C.S.1922, § 4922; C.S.1929, § 26-910; Laws 1933, c. 96, § 3, p. 384; C.S.Supp.,1941, § 26-910; R.S.1943, § 23-1210; Laws 1957, c. 70, § 2, p. 295; Laws 1981, LB 204, § 27; Laws 1987, LB 313, § 1; Laws 1996, LB 1011, § 10.

Section is constitutional. Effect is to incorporate in new law the existing laws defining the duties of coroner. State ex rel. Crosby v. Moorhead, 100 Neb. 298, 159 N.W. 412 (1916).

23-1211 Repealed. Laws 1969, c. 411, § 1.

23-1212 Terms, defined.

For purposes of sections 23-1212 to 23-1222, unless the context otherwise requires:

(1) County attorney shall mean the county attorney of a county in this state whether such position is elective or appointive and regardless of whether such position is full time or part time;

(2) Deputy county attorney shall mean an attorney employed by a county in this state for the purpose of assisting the county attorney in carrying out his or her responsibilities regardless of whether such position is full time or part time;

(3) Council shall mean the Nebraska County Attorney Standards Advisory Council;

(4) Attorney General shall mean the Nebraska Attorney General;

(5) Commission shall mean the Nebraska Commission on Law Enforcement and Criminal Justice; and

(6) Continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, shall mean that type of legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, which has application to and seeks to maintain and improve the skills of the county attorney and deputy county attorney in carrying out the responsibilities of his or her office or position.

Source: Laws 1980, LB 790, § 1; Laws 1990, LB 1246, § 1.

23-1213 Nebraska county attorney standards advisory council; created; members; qualifications; appointment; terms; vacancy.

There is hereby created the Nebraska County Attorney Standards Advisory Council which shall consist of seven members, four of whom shall be either a county attorney or deputy county attorney, one member being a professor of law, and two members being county commissioners or supervisors. The members of such council shall be appointed by the Governor. Of the county attorneys or deputy county attorneys appointed to such council, one shall be from Douglas County, one shall be from Lancaster County, and the remaining two shall be appointed from the remainder of the state. Members of the council shall serve a term of four years, except that of the members first appointed one member shall serve a term of one year, two members shall serve a term of two years, two members shall serve a term of three years, and two members shall each serve a term of four years. A member may be reappointed at the expiration of his or her term. Any vacancy occurring other than by expiration of a term shall be filled for the remainder of the unexpired term in the same manner as the original appointment. The council shall select one of its members as chairperson. The Governor shall make the appointments under this section within ninety days of July 19, 1980.

Members of the council shall have such membership terminated if they cease to hold the office of county attorney, deputy county attorney, or county commissioner or supervisor. A member of the council may be removed from the council for good cause upon written notice and upon an opportunity to be heard before the Governor. After the hearing, the Governor shall file in the office of the Secretary of State a complete statement of the charges and the findings and disposition together with a complete record of the proceedings.

Source: Laws 1980, LB 790, § 2.

23-1214 Council; membership; holding other office or position; effect.

Notwithstanding any other provision of law, membership on the council shall not disqualify any member from holding his or her office or position or cause the forfeiture thereof.

Source: Laws 1980, LB 790, § 3.

23-1215 Council; members; expenses.

Members of the council shall serve without compensation, but they shall be entitled to reimbursement for actual and necessary expenses incident to such service on the council as provided in section 81-1174, for state employees.

Source: Laws 1980, LB 790, § 4.

23-1216 Council; continuing legal education; duties.

The council shall be responsible for establishing the annual number of hours of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children. The council shall periodically review the required number of hours of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children. The council shall develop educational criteria, formats, and program objectives to be used in the delivery of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, for county attorneys and deputy county attorneys, except that the annual number of hours spent in continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, shall not exceed thirty-six contact hours.

Source: Laws 1980, LB 790, § 5; Laws 1990, LB 1246, § 2.

23-1217 County attorney; deputy county attorney; continuing legal education required; failure to complete; effect.

Every county attorney and deputy county attorney in this state shall annually undertake and complete the required hours of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, as prescribed by the council under section 23-1216. Failure on the part of any county attorney or deputy county attorney to complete the required number of hours of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, may subject such county attorney or deputy county attorney to removal from office under section 23-1220.

Source: Laws 1980, LB 790, § 6; Laws 1990, LB 1246, § 3.

23-1218 Nebraska Commission on Law Enforcement and Criminal Justice; continuing legal education; duties; enumerated.

The Nebraska Commission on Law Enforcement and Criminal Justice, after consultation with the council, shall:

(1) Establish curricula for the implementation of a mandatory continuing legal education program, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, for county attorneys and deputy county attorneys;

(2) Administer all programs of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, for county attorneys and deputy county attorneys required under sections 23-1212 to 23-1222;

(3) Evaluate the effectiveness of programs of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, required under sections 23-1212 to 23-1222;

(4) Certify the number of hours of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, completed by a county attorney and deputy county attorney as required under sections 23-1212 to 23-1222 and maintain all records relating thereto;

(5) Report to the Attorney General the names of all county attorneys and deputy county attorneys who have failed to complete the number of hours of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, as required under section 23-1217;

(6) Establish tuition and fees for all programs of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, as required under sections 23-1212 to 23-1222;

(7) Adopt and promulgate necessary rules and regulations for the effective delivery of all programs of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, for county attorneys and deputy county attorneys as required under sections 23-1212 to 23-1222;

(8) Do all things necessary to carry out the purpose of training county attorneys and deputy county attorneys as required by sections 23-1212 to 23-1222; and

(9) Receive and distribute appropriated funds to the Nebraska County Attorneys Association to develop, administer, and conduct continuing legal education seminars, prepare and publish trial manuals and other publications, and take any other measure that will enhance the investigation and prosecution of crime in this state.

Source: Laws 1980, LB 790, § 7; Laws 1990, LB 1246, § 4.

23-1219 County attorney; deputy county attorney; failure to fulfill continuing legal education requirements; commission; investigate; duties.

When it comes to the attention of the commission that a county attorney or deputy county attorney has not fulfilled the required number of hours of annual mandatory continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, required by section 23-1217, it shall investigate such failure to comply in order to determine whether or not such failure was willful or negligent. If the commission determines that the failure to comply was willful or negligent, it shall refer the matter to the Attorney General for action under section 23-1220. If the commission determines that the failure to comply was not willful or negligent, it shall permit the county attorney or deputy county attorney to make up all outstanding hours of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children. In doing so, the commission shall establish a deadline by which such hours must be undertaken and completed. In making up any outstanding hours of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children under this section, such hours shall be in addition to those hours which are annually required under section 23-1217.

Source: Laws 1980, LB 790, § 8; Laws 1990, LB 1246, § 5.

23-1220 County attorney; deputy county attorney; failure to complete continuing legal education; Attorney General; commence civil action.

Upon being advised by the commission of a failure on the part of a county attorney or deputy county attorney to complete the number of hours of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, required by section 23-1217, the Attorney General shall commence a civil action in the district court of the county in which the county attorney holds office, or in the case of a deputy county attorney in the district court of the county in which he or she is employed, seeking his or her removal from office or employment. Such action shall be brought in the name of the county. Such action shall be tried in the same manner as other civil actions under Chapter 25, except that such action shall be tried exclusively to the court without a jury.

Source: Laws 1980, LB 790, § 9; Laws 1990, LB 1246, § 6.

23-1221 County attorney; deputy county attorney; removal from office; vacancy; how filled.

If a county attorney is removed from office as a result of the action authorized under section 23-1220, such office shall be declared vacant and the county board shall fill the vacancy by appointment with a qualified candidate. If a deputy county attorney is removed from office as a result of the action authorized under section 23-1220, the vacancy may be filled pursuant to section 23-1204.

Source: Laws 1980, LB 790, § 10.

23-1222 Continuing education; tuition, fees, expenses; how paid.

Tuition, fees, and other expenses incurred by a county attorney or deputy county attorney in fulfilling the requirements of section 23-1217 shall be paid by the county. Tuition, fees, and other expenses incurred by all other persons who may attend such programs of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, shall be the responsibility of the person attending.

Source: Laws 1980, LB 790, § 11; Laws 1990, LB 1246, § 7.

23-1223 Traveling expenses; mileage.

(1) In all cases when the county attorney has engaged in the courts of another county in any suit, application, or motion, either civil or criminal, in which the state or county is a party interested, which has been transferred by change of venue from his or her county to another county, he or she shall be allowed his or her reasonable and necessary traveling and hotel expenses while so engaged, in addition to his or her regular salary.

(2) The expenses referred to in subsection (1) of this section shall be paid to him or her upon the presentation of a bill for the same, accompanied by proper vouchers, to the county board of his or her county, in like manner as provided in all other cases of claims against the county. In computing reasonable and necessary traveling expenses, the county attorney shall be allowed mileage at the rate allowed by section 81-1176, but if travel by rail or bus is economical and practical and if mileage expense may be reduced thereby, he or she shall be allowed only the actual cost of rail or bus transportation.

Source: Laws 1885, c. 40, § 5, p. 217; Laws 1899, c. 6, § 2, p. 57; Laws 1903, c. 7, § 2, p. 58; Laws 1909, c. 7, § 1, p. 63; Laws 1911, c. 7, § 1, p. 74; Laws 1913, c. 255, § 1, p. 788; R.S.1913, § 2432; Laws 1919, c. 65, § 1, p. 173; C.S.1922, § 2372; Laws 1927, c. 116, § 1, p. 325; C.S.1929, § 33-111; Laws 1933, c. 96, § 6, p. 385; C.S.Supp.,1941, § 33-111; Laws 1943, c. 90, § 18, p. 305; R.S. 1943, § 33-108; Laws 1957, c. 70, § 3, p. 295; Laws 1981, LB 204, § 49; R.S.1943, (1988), § 33-108; Laws 1989, LB 4, § 5; Laws 1996, LB 1011, § 11.

Counties are obligated to pay costs and expenses of prosecutions, including fees and expenses of attorneys appointed to represent indigent defendants in criminal cases, and there is no requirement that a property tax be levied therefor. Kovarik v. County of Banner, 192 Neb. 816, 224 N.W.2d 761 (1975).

ARTICLE 13

COUNTY CLERK

Cross References

Constitutional provisions:
Election, when held, see Article XVII, section 4, Constitution of Nebraska.
Term begins, see Article XVII, section 5, Constitution of Nebraska.
Abstracting, cannot engage in, when, see section 76-504.
Act as clerk of district court, see section 32-524.
Act as county assessor, see sections 23-3201 to 23-3203.
Act as county comptroller, see section 23-1401.
Act as election commissioner, see section 32-218.
Act as register of deeds, see section 23-1502.
Act as sheriff, see sections 23-1713 and 23-1714.
Attorney, practice prohibited, when, see section 7-111.
Bond, see section 11-119.

Deputy county clerk for elections, see section 32-218.
Duties of county clerk in particular matters:
Bonds of indebtedness, see Chapter 10.
Clerk of district court, perform duties of, when, see section 32-524.
Corporations, see Chapter 21.
County fair, see Chapter 2, article 2.
Elections, see Chapter 32.
Motor vehicle titles, see Chapter 60, article 1.
Session laws and journals, distribution, see sections 49-502 to 49-505.
Taxation, see Chapter 77.
Elected, when, see section 32-517.
Fees for recording instruments, see Chapter 33.
Vacancy:
How filled, see section 32-567.
Possession and control of office by deputy, see section 32-563.

Section

23-1301 County clerk; office; duties; residency.

The county clerk shall keep his or her office at the county seat; shall attend the sessions of the county board; shall keep the seal, records, and papers of the board; and shall sign the record of the proceedings of the board and attest the same with the county seal. After the period of time specified by the State Records Administrator pursuant to the Records Management Act, the county clerk may transfer such record of the proceedings of the board to the State Archives of the Nebraska State Historical Society for permanent preservation.

A county clerk elected after November 1986 need not be a resident of the county when he or she files for election as county clerk, but a county clerk shall reside in a county for which he or she holds office.

Source: Laws 1879, § 73, p. 374; R.S.1913, § 5605; C.S.1922, § 4924; C.S.1929, § 26-1001; R.S.1943, § 23-1301; Laws 1973, LB 224, § 5; Laws 1986, LB 812, § 3; Laws 1996, LB 1085, § 31.

Cross References

Records Management Act, see section 84-1220.

Failure by a public governing body, as defined under section 84-1409, R.R.S.1943, to take and record a roll call vote on an action, as required by section 84-1413(2), R.S.Supp.,1980, grants any citizen the right to sue for the purpose of having the action declared void. In this case such failure could not be later corrected by a nunc pro tunc order because there was no showing that a roll call vote on the disputed action was actually taken, and even if it was the record showed it was not recorded until over a year later. Sections 23-1301, R.R.S.1943, and 23-1302, R.R.S.1943, make it the duty of the county clerk to record proceedings of the board of county commissioners. State ex rel. Schuler v. Dunbar, 208 Neb. 69, 302 N.W.2d 674 (1981).

23-1301.01 County clerk; deputy; appointment; oath; duties.

The county clerk may appoint a deputy for whose acts he or she will be responsible. The clerk may not appoint the county treasurer, sheriff, register of deeds, or surveyor as deputy.

The appointment shall be in writing and revocable in writing by the clerk. Both the appointment and revocation shall be filed and kept in the office of the clerk.

The deputy shall take the same oath as the clerk which shall be endorsed upon and filed with the certificate of appointment. The clerk may require a bond of the deputy.

In the absence or disability of the clerk, the deputy shall perform the duties of the clerk pertaining to the office, but when the clerk is required to act in conjunction with or in place of another officer, the deputy cannot act in the clerk's place.

Source: Laws 1990, LB 821, § 3.

23-1302 County clerk; duties.

It shall be the general duty of the county clerk:

(1) To record in a book provided for that purpose all proceedings of the board. If the county clerk or his or her deputy is unable to be present for any proceeding of the board, the county clerk may appoint a designee to record such proceedings;

(2) To make regular entries of its resolutions and decisions in all questions concerning the raising of money;

(3) To countersign all warrants issued by the board and signed by its chairperson;

(4) To preserve and file all accounts acted upon by the board, with its action thereon, and perform such special duties as are required by law. Such special duties do not include budget-making duties performed under section 23-906. In a county having a county comptroller, all accounts acted upon by the board shall remain on file in the office of such comptroller; and the county clerk shall certify to the county treasurer as of June 15 and December 15 of each year the total amount of unpaid claims of the county; and

(5) To prepare and file with the county board the annual inventory statement of county personal property in his or her custody and possession, and to perform the duties enjoined upon him or her by sections 23-346 to 23-350.

Source: Laws 1879, § 74, p. 374; Laws 1907, c. 33, § 1, p. 166; R.S.1913, § 5606; C.S.1922, § 4925; C.S.1929, § 26-1002; Laws 1935, c. 53, § 1, p. 183; Laws 1939, c. 28, § 7, p. 147; C.S.Supp.,1941, § 26-1002; R.S.1943, § 23-1302; Laws 2002, LB 1018, § 2; Laws 2005, LB 762, § 1.

Cross References

Distribute political accountability and disclosure forms, see section 49-14,139.

Failure by a public governing body, as defined under section 84-1409, R.R.S.1943, to take and record a roll call vote on an action, as required by section 84-1413(2), R.S.Supp.,1980, grants any citizen the right to sue for the purpose of having the action declared void. In this case such failure could not be later corrected by a nunc pro tunc order because there was no showing that a roll call vote on the disputed action was actually taken, and even if it was the record showed it was not recorded until over a year later. Sections 23-1301, R.R.S.1943, and 23-1302, R.R.S.1943, make it the duty of the county clerk to record proceedings of the board of county commissioners. State ex rel. Schuler v. Dunbar, 208 Neb. 69, 302 N.W.2d 674 (1981).

County clerk may be required by law to perform special duties, such as issuance of certificates of title in connection with motor vehicle registration, and the fees earned belong to the county. Hoctor v. State, 141 Neb. 329, 3 N.W.2d 558 (1942).

23-1303 Warrants; funds transfer systems; procedure.

(1) The county clerk shall not issue any county warrants except upon claims approved by the county board. Every warrant issued shall be numbered

consecutively as allowed from July 1 to June 30, corresponding with the fiscal year of the county. The county clerk shall maintain records including the date, amount, and number of each warrant, the name of the person to whom a warrant is issued, and the date a warrant is returned as canceled. The records shall be made accessible to the public for viewing, in either an electronic or printed format.

(2)(a) The county clerk shall develop and implement a system of warrant preparation and issuance by electronic or mechanical means which is compatible with the funds transfer system established by the county treasurer pursuant to subsection (6) of this section.

(b) Warrant includes an order issued by the chairperson of the county board and countersigned by the county clerk directing that the county treasurer make payment in a specified amount to a specified payee by the use of a dual signature negotiable instrument as provided for in subsections (3) and (4) of this section, an electronic funds transfer system, a telephonic funds transfer system, funds transfers as provided in article 4A, Uniform Commercial Code, a mechanical funds transfer system, or any other funds transfer system established by the county treasurer.

(3) The chairperson of the county board shall sign each warrant or shall cause each warrant to be signed in his or her behalf either personally, by delegation of authority, or by facsimile or electronic signature. The signature of the chairperson of the county board shall signify that the payment intended by a warrant bearing such signature is proper under the appropriate laws of the state and resolutions of the county.

(4) The county clerk shall countersign all warrants issued by the chairperson of the county board either personally, by delegation of authority, or by facsimile or electronic signature.

(5) The county treasurer shall, if requested by the county clerk or the county board, establish procedures and processes for facsimile or electronic signature of warrants.

(6) The county treasurer may establish and operate an electronic funds transfer system, a telephonic funds transfer system, funds transfers as provided for in article 4A, Uniform Commercial Code, a mechanical funds transfer system, or any other funds transfer system for the payment of funds from and the deposit of receipts into the county treasury. Such system as established by the county treasurer shall employ internal control safeguards and after meeting such safeguards shall be deemed to satisfy any signature requirements. The use of an electronic funds transfer system, a telephonic funds transfer system, funds transfers as provided for in article 4A, Uniform Commercial Code, a mechanical funds transfer system, or any other funds transfer system established by the county treasurer shall not create any rights that would not have been created had an order, drawn by the chairperson of the county board upon the county treasurer directing the latter to pay a specified amount to a specified payee by the use of a dual signature negotiable instrument as provided for in subsections (3) and (4) of this section, been used as the payment medium.

Source: Laws 1879, § 75, p. 374; R.S.1913, § 5607; C.S.1922, § 4926; C.S.1929, § 26-1003; R.S.1943, § 23-1303; Laws 1947, c. 74, § 1, p. 235; Laws 1999, LB 86, § 13.

Clerk cannot draw warrants except as ordered. State ex rel. Conger v. Maccuaig, 8 Neb. 215 (1879).

23-1304 Official bonds; record; duty to keep.

The county clerk shall keep a book in which shall be entered in alphabetical order, by name of the principal, a minute of all official bonds filed in his office, giving the name of the office, amount and date of bond, names of sureties, and date of filing, with proper reference to the book and page where the same is recorded.

Source: Laws 1879, § 76, p. 375; R.S.1913, § 5608; C.S.1922, § 4927; C.S.1929, § 26-1004.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

23-1305 Road record; duty to keep.

It shall be the duty of the county clerk to record in a proper book, to be called the Road Record, a record of the proceedings in regard to laying out and establishing, changing or discontinuing roads in the county.

Source: Laws 1879, § 77, p. 375; R.S.1913, § 5609; C.S.1922, § 4928; C.S.1929, § 26-1005.

23-1306 County officers; signatures and seals; duty to report to Secretary of State.

It shall be the duty of the county clerk to report to the Secretary of State, on or before the first day of February of each year, the names of all the county officers with their official signatures and seals of their respective offices. When any change is made in the incumbent of any county office, the change shall be forthwith reported by the county clerk to the Secretary of State, who shall preserve and record such lists with changes subsequently made therein.

Source: Laws 1879, § 90, p. 379; R.S.1913, § 5610; C.S.1922, § 4929; C.S.1929, § 26-1006; R.S.1943, § 23-1306; Laws 1955, c. 76, § 1, p. 230.

23-1307 Oaths; acknowledgments.

All county clerks and their deputies shall have authority to administer oaths and affirmations in all cases where oaths and affirmations are required, and to take acknowledgments of deeds, mortgages, and all other instruments in writing, and shall attest the same with the county seal.

Source: Laws 1883, c. 19, § 1, p. 181; R.S.1913, § 5611; C.S.1922, § 4930; C.S.1929, § 26-1007.

Clerk must report fees for such services, though performed as notary public. State ex rel. Frontier County v. Kelly, 30 Neb. 574, 46 N.W. 714 (1890).

Clerk or deputy may administer oaths and affirmations. Merriam v. Coffee, 16 Neb. 450, 20 N.W. 389 (1884).

23-1308 Repealed. Laws 1963, c. 339, § 1.

23-1309 Veterans discharge record; duty to keep; information; confidential.

It shall be the duty of the county clerk in each county to keep in a separate book or books, entitled Discharge Record, a copy of all discharges or records of separation from active duty from the armed forces of the United States.

Information contained in the Discharge Record shall be confidential and made available only to the veteran, county veterans service officer, or post service officer of a recognized veterans organization.

Source: Laws 1921, c. 123, § 1, p. 533; C.S.1922, § 4935; C.S.1929, § 26-1012; R.S.1943, § 23-1309; Laws 1945, c. 50, § 1, p. 234; Laws 1953, c. 60, § 1, p. 198; Laws 1969, c. 166, § 1, p. 742; Laws 2005, LB 54, § 4.

23-1310 Veterans discharge or record of separation; registration upon application.

Any person residing in Nebraska or who entered the service from Nebraska and who served in any branch of the armed forces of the United States may apply for registration of his or her discharge or record of separation in the office of the county clerk where such person resides. No fee shall be charged for recording such discharge or record of separation.

Source: Laws 1921, c. 123, § 2, p. 533; C.S.1922, § 4936; C.S.1929, § 26-1013; R.S.1943, § 23-1310; Laws 1953, c. 60, § 2, p. 199; Laws 2005, LB 54, § 5.

23-1311 Instruments; signatures; illegible; refusal to file.

The name or names of each signer of an instrument presented for filing or recording in the office of the county clerk or register of deeds, including the name of any notary or official taking the acknowledgment, shall be typewritten or legibly printed beneath such signature, and the county clerk or register of deeds may refuse to accept and file any instrument failing to meet the requirements of this section; *Provided*, that if the county clerk or register of deeds determines that all signatures on the instrument are legible, he shall not refuse to file the instrument.

Source: Laws 1959, c. 90, § 1, p. 400.

23-1312 Repealed. Laws 1994, LB 76, § 615.

23-1313 Name of farm, ranch, or home; registration.

The owner of any farm, ranch, or home may, upon the payment of one dollar to the county clerk of the county in which such farm, ranch, or home is located, have the name of the farm, ranch, or home duly recorded in a register to be kept by the county clerk for that purpose and may receive a certificate, under the seal of such office, setting forth the name of the farm, ranch, or home, its description by the United States survey, and the name of the owner. When any name of a farm, ranch, or home has been so recorded, such name shall not be recorded as the name of any other farm, ranch, or home in the same county unless plain designating words are prefixed, affixed, or both prefixed and affixed to the name. Upon the recording of a certified transfer of a name by the owner of the farm, ranch, or home, the certified transfer shall be made an additional part of the records so kept.

Source: Laws 1911, c. 84, § 1, p. 338; R.S.1913, § 3093; C.S.1922, § 2833; C.S.1929, § 40-118; R.S.1943, § 40-118; R.S.1943, (1988), § 40-118; Laws 1989, LB 12, § 1; R.S.1943, (1996), § 61-105.

ARTICLE 14
COUNTY COMPTROLLER IN CERTAIN COUNTIES

Section

23-1401 County comptroller; qualifications; duties.

In any county in this state having a population in excess of three hundred thousand inhabitants, there is hereby created the office of county comptroller for such county, and the county clerk of such county shall be the ex officio county comptroller for the county. The county comptroller shall act as the general accountant, chief auditing officer, internal auditor, and fiscal agent of the county and shall exercise a general supervision over all officers of the county charged in any manner with the receipt, collection, or disbursement of the county revenue. The county comptroller shall be a competent bookkeeper and accountant, and it shall be his or her duty to keep a complete set of books in which, among other things, the amount of the appropriation that has been made on the fund that has been expended on account of such appropriation fund shall be stated. It shall be the duty of the county comptroller to audit all claims filed against the county and prepare a report thereon to the county board of such county. The county comptroller shall also keep accurate and separate accounts between the county and officers of the county, and between the county and all contractors or other persons doing work or furnishing material for the county. The county comptroller shall also examine and check the reports of all officers of the county. The county comptroller shall prepare and file the required annual inventory statement of county personal property in his or her custody or possession, as provided in sections 23-346 to 23-350.

Source: Laws 1915, c. 181, § 1, p. 369; C.S.1922, § 4937; C.S.1929, § 26-1101; Laws 1939, c. 28, § 12, p. 152; C.S.Supp.,1941, § 26-1101; R.S.1943, § 23-1401; Laws 1947, c. 62, § 7, p. 201; Laws 1991, LB 798, § 6.

Special investigation of certain county records as requested by grand jury was not service required to be performed by county comptroller. Campbell v. Douglas County, 142 Neb. 773, 7 N.W.2d 764 (1943).

23-1402 Treasurer's account; how kept.

The county comptroller shall keep a distinct account with the treasurer of the county for each several term for which the treasurer may be elected, in a book to be provided for that purpose, commencing from the day on which the treasurer became qualified, and continuing until the same or other person is qualified as treasurer. In this account he shall charge the treasurer with the amount of taxes levied and assessed in each year, as the same appears on each tax list, delivered to him during his term of office; with the amount of money and with the amount of state, county and general fund warrants, road orders or other evidences of indebtedness, which the county treasurer may have been authorized to receive from his predecessors in office; with the amount of any

additional assessments made after the delivery of any tax list, with the amount of any additional penalty added to the taxes, after the same became delinquent according to law; with the amount due the county for advertising lands for sale for delinquent taxes; with the amount received from the sale of any property, belonging to the county; with the amount received as fines and forfeitures; with the amount received from dram shop, tavern, grocery and other licenses; with the amount of money received from any other source authorized by law. Upon presentation of proper vouchers he shall credit the county treasurer with the amount of all county tax which has been paid over to the proper authority and receipted for; with the amount of county warrants received by the county treasurer, and returned to the county board and canceled; with the amount of delinquent taxes and any additional penalty due thereon; with the amount due on lands and lots for advertising the same for sale; with the amount of double and erroneous assessments of property; with the amount of percentage fees allowed by law to the county treasurer for collecting taxes; with the amount of money and the amount of warrants or orders or other evidences of indebtedness which the county treasurer is allowed by law to receive for taxes, which he pays over to his successor in office; with the amount of taxes uncollected on the tax lists delivered over to his successor in office.

Source: Laws 1915, c. 181, § 2, p. 369; C.S.1922, § 4938; C.S.1929, § 26-1102.

23-1403 Record of claims; assistants; appointment; absence or disability; power of deputy.

The county comptroller shall perform such other duties as may be required by law. The comptroller shall keep a record of all claims filed against the county, and the claims themselves he shall keep on file in his office. The county comptroller is hereby authorized and empowered to appoint the necessary help to be paid by the county, but for whose acts and doings said comptroller shall be responsible. During his absence or disability to act as said comptroller, his deputy is hereby authorized to do and perform any and all acts that might by such comptroller himself be done and performed if present.

Source: Laws 1915, c. 181, § 3, p. 370; C.S.1922, § 4939; C.S.1929, § 26-1103.

23-1404 Powers; limitation.

All duties given and delegated to the county comptroller, which are performed or exercised by other county officials of such county, are hereby expressly taken from such county officials and made the special duty and obligation of the county comptroller; *Provided*, that no duty required to be performed or power exercised shall be taken from any county official which shall be necessary for the proper performance of any duty required by law of such official which is not hereby made the special duty of the county comptroller.

Source: Laws 1915, c. 181, § 4, p. 370; C.S.1922, § 4940; C.S.1929, § 26-1104.

23-1405 Salary; determination.

In counties having a county comptroller, as provided for in section 23-1401, such comptroller may receive a salary as determined by the county board.

Source: Laws 1917, c. 167, § 1, p. 376; C.S.1922, § 4941; C.S.1929, § 26-1105; R.S.1943, § 23-1405; Laws 1991, LB 798, § 7; Laws 1995, LB 729, § 1.

23-1406 Repealed. Laws 1951, c. 52, § 1.

23-1407 County comptroller; office; equipment.

In all counties having a county comptroller, the county board shall provide suitable office room, fireproof vaults of sufficient capacity, necessary books, blanks, stationery, clerks, and office furniture for the use of said county comptroller.

Source: Laws 1907, c. 38, § 1, p. 174; R.S.1913, § 1107; C.S.1922, § 1041; C.S.1929, § 26-735.

ARTICLE 15

REGISTER OF DEEDS

Cross References

Constitutional provisions:
Election, when held, see Article XVII, section 4, Constitution of Nebraska.
Legislature, provide for election, see Article IX, section 4, Constitution of Nebraska.
Term begins, see Article XVII, section 5, Constitution of Nebraska.
Abstracting, cannot engage in, when, see section 76-504.
Elected, when, see section 32-518.
Fees, see Chapter 33.
Instrument without legible name, refusal to file, see section 23-1311.
Recording of particular matters:
Corporations, appointments of agents for service of summons, see section 25-528.
Deeds and other instruments affecting real estate, see Chapter 76, article 2.
Lis pendens notices, see section 25-531.
Oil, gas, and mineral leases, see Chapter 57, article 2.
Wills, when, see section 76-240.
Vacancy:
How filled, see section 32-567.
Possession and control of office by deputy, see section 32-563.

Section

Section
23-1518. Repealed. Laws 1965, c. 107, § 1.
23-1519. Repealed. Laws 1965, c. 107, § 1.
23-1520. Repealed. Laws 1965, c. 107, § 1.
23-1521. Repealed. Laws 1965, c. 107, § 1.
23-1522. Repealed. Laws 1969, c. 433, § 10.
23-1523. Repealed. Laws 1969, c. 433, § 10.
23-1524. Repealed. Laws 1969, c. 433, § 10.
23-1525. Repealed. Laws 1969, c. 433, § 10.
23-1526. Repealed. Laws 1989, LB 5, § 7.
23-1527. Bankruptcy proceedings; recording; fee.

23-1501 Register of deeds; office, equipment, and supplies; residency.

In each county that has a register of deeds, the county board shall provide suitable office room, fireproof vaults of sufficient capacity, and necessary books, blanks, stationery, and office furniture for the use of the register of deeds.

A register of deeds elected after November 1986 need not be a resident of the county when he or she files for election as register of deeds, but a register of deeds shall reside in a county for which he or she holds office.

Source: Laws 1887, c. 30, § 2, p. 364; R.S.1913, § 5616; C.S.1922, § 4943; C.S.1929, § 26-1201; R.S.1943, § 23-1501; Laws 1986, LB 812, § 4; Laws 1989, LB 24, § 1; Laws 1996, LB 1085, § 32.

23-1501.01 Register of deeds; deputy; appointment; oath; duties.

When authorized by the county board, the register of deeds may appoint one or more deputies for whose acts he or she will be responsible. The register of deeds may not appoint the county treasurer, sheriff, clerk, or surveyor as deputy.

The appointment shall be in writing and revocable in writing by the register of deeds. Both the appointment and revocation shall be filed and kept in the office of the county clerk.

The deputy shall take the same oath as the register of deeds which shall be endorsed upon and filed with the certificate of appointment. The register of deeds may require a bond of the deputy.

In the absence or disability of the register of deeds, the deputy shall perform the duties of the register of deeds pertaining to the office, but when the register of deeds is required to act in conjunction with or in place of another officer, the deputy cannot act in the place of the register of deeds.

Source: Laws 1990, LB 821, § 5.

23-1502 County clerk ex officio register of deeds, when.

Unless a register of deeds is elected pursuant to section 32-518, the county clerk shall perform all the duties imposed by law upon the register of deeds and shall be ex officio register of deeds.

Source: Laws 1887, c. 30, § 3, p. 364; R.S.1913, § 5617; C.S.1922, § 4944; C.S.1929, § 26-1202; R.S.1943, § 23-1502; Laws 1989, LB 24, § 2; Laws 1994, LB 76, § 542.

23-1503 Record of instruments; form.

The register of deeds shall keep a book or computerized system, as provided by section 23-1517.02, in which every instrument filed for record in his or her office shall be entered at the time of filing the same. Such books or computerized systems shall show the final disposition of such instrument and, if in book form, be as nearly as practicable in the following form:

Grantor Grantee	Character of Instrument		Where Recorded		Date of Delivery			The Party to Whom Delivered
			Book	Page	Month	Day	Year	

Source: Laws 1887, c. 30, § 4, p. 365; R.S.1913, § 5618; C.S.1922, § 4945; C.S.1929, § 26-1203; R.S.1943, § 23-1503; Laws 1984, LB 679, § 3.

23-1503.01 Instrument submitted for recording; requirements.

Any instrument submitted for recording in the office of the register of deeds shall contain a blank space at the top of the first page which is at least two and one-half inches by six and one-half inches in size for recording information required by section 23-1510 by the register of deeds. If this space or the information required by such section is not provided, the register of deeds may add a page or use the back side of an existing page and charge for the page a fee established by section 33-109 for the recording of an instrument.

Printed forms primarily intended to be used for recordation purposes shall have a one-half-inch margin on the two vertical sides except in the space reserved for recording information. Any printed form accepted for recordation that does not comply with this section shall not affect the validity of or the notice otherwise given by the recording.

Source: Laws 1990, LB 1153, § 52; Laws 1995, LB 288, § 1.

23-1504 Seal; when required; certified copies.

The register of deeds shall have and keep an official seal, which may be either an engraved or ink stamp seal, and which shall have included thereon the name of the county, register of deeds, and the word Nebraska, and he shall attach an impression or representation of said seal to every certificate made by him except such as are required to be endorsed upon instruments filed in his office for record. Copies of any record in his office, certified under his hand and said official seal, shall be receivable in evidence in all respects in the same manner as the original records.

Source: Laws 1887, c. 30, § 31, p. 377; R.S.1913, § 5619; C.S.1922, § 4946; C.S.1929, § 26-1204; R.S.1943, § 23-1504; Laws 1971, LB 653, § 3.

23-1505 Acknowledgments; oaths; power to administer.

The register of deeds shall have power to take acknowledgments and administer oaths and to certify the same under his or her hand and official seal.

Source: Laws 1887, c. 30, § 32, p. 377; R.S.1913, § 5620; C.S.1922, § 4947; C.S.1929, § 26-1205; R.S.1943, § 23-1505; Laws 1990, LB 821, § 4.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

23-1506 Documents; deeds and conveyances; recording; errors; inventory statement; duty to file; exceptions.

The register of deeds shall have the custody of and safely keep and preserve all books, records, maps, and papers kept or deposited in his or her office. He or she shall also record or cause to be recorded all deeds, mortgages, instruments, and writings presented to him or her for recording and left with him or her for that purpose. Plats and subdivisions are not authorized to be recorded if such plat or subdivision has not been approved by the city council, the village board of trustees, the agent of a city of the first or second class or of a village designated pursuant to section 19-916, or the governing body of the county, whichever is appropriate. When such deeds, mortgages, instruments, and writings are so recorded, it shall be the duty of the register of deeds to proofread or cause to be proofread such records. If an error should occur in recording any of the writings mentioned in this section thereby necessitating the rerecording of same, the expense thus incurred shall be paid out of the general fund of the county in the same way as any other claim, and the amount so paid shall be collected from the official responsible for the error or from his or her official bond. The register of deeds shall prepare and file the required annual inventory statement of county personal property in his or her custody or possession as provided in sections 23-346 to 23-350.

Source: Laws 1885, c. 41, § 3, p. 221; Laws 1887, c. 30, § 5, p. 365; Laws 1893, c. 14, § 1, p. 147; R.S.1913, § 5621; C.S.1922, § 4948; C.S.1929, § 26-1206; Laws 1939, c. 28, § 13, p. 153; C.S.Supp.,1941, § 26-1206; R.S.1943, § 23-1506; Laws 1973, LB 241, § 1; Laws 1982, LB 418, § 1; Laws 1983, LB 71, § 13; Laws 1984, LB 679, § 4.

23-1507 Violations; penalty.

Any register of deeds who shall neglect to perform any of the duties described in section 23-1506 shall be guilty of a Class IV misdemeanor.

Source: Laws 1893, c. 14, § 2, p. 147; R.S.1913, § 5622; C.S.1922, § 4949; C.S.1929, § 26-1207; R.S.1943, § 23-1507; Laws 1977, LB 40, § 96.

23-1508 Grantor and grantee index.

The register of deeds shall keep a grantor and a grantee index of deeds in his or her office. If such index is in book form, the pages shall be divided into eight columns as follows:

GRANTOR INDEX

Grantors	Grantees	Date of Filing	Date of Instrument	Character of Instrument	Book	Page	Description of Tract

GRANTEE INDEX

Grantees	Grantors	Date of Filing	Date of Instrument	Character of Instrument	Book	Page	Description of Tract

Source: Laws 1885, c. 41, § 4, p. 221; Laws 1887, c. 30, § 6, p. 365; R.S.1913, § 5623; C.S.1922, § 4950; C.S.1929, § 26-1208; R.S. 1943, § 23-1508; Laws 1984, LB 679, § 5.

This statute is a check on numerical index statute to insure accuracy in ascertaining state of records as to titles to real estate. Crook v. Chilvers, 99 Neb. 684, 157 N.W. 617 (1916).

23-1509 Grantor and grantee index; entries; form.

The entries in such index shall be double, the one showing the names of the respective grantors arranged in alphabetical order, and the other those of the grantees in like order. When there are two or more grantors having different surnames there must be as many distinct entries among the grantors as there are names, being alphabetically arranged in regard to each of such names. The same rule shall be followed in case of several grantees.

Source: Laws 1879, § 80, p. 376; R.S.1913, § 5624; C.S.1922, § 4951; C.S.1929, § 26-1209.

Purpose of statute in requiring both general index and numerical index is to guard against blunders in recording. Crook v. Chilvers, 99 Neb. 684, 157 N.W. 617 (1916).

23-1510 Instruments; endorsement, recording, and indexing.

The register of deeds shall endorse upon every instrument properly filed in his or her office for record the minute, hour, day, month, and year when it was so filed and shall forthwith enter the same in the proper indices herein provided for. After the same has been recorded, the book and page or computer system reference where it may be found shall be endorsed thereon.

Source: Laws 1885, c. 41, § 5, p. 222; Laws 1887, c. 30, § 7, p. 366; R.S.1913, § 5625; C.S.1922, § 4952; C.S.1929, § 26-1210; R.S. 1943, § 23-1510; Laws 1984, LB 679, § 6.

Certificate of filing of instrument for record is sufficient prima facie proof that document was so filed. Smith Bros. v. Woodward, 94 Neb. 298, 143 N.W. 196 (1913).

23-1511 Deed record; mortgage record; duty to keep.

In counties where the book form of recording instruments is used, different sets of books shall be provided for the recording of deeds and mortgages. In

one of the sets all conveyances absolute in their terms and not intended as mortgages or as securities in the nature of mortgages shall be recorded, and in the other set such mortgages and securities shall be recorded.

Source: Laws 1879, § 81, p. 376; R.S.1913, § 5626; C.S.1922, § 4953; C.S.1929, § 26-1211; R.S.1943, § 23-1511; Laws 1984, LB 679, § 7.

Assignment for creditors, containing only personal property, need not be recorded with register of deeds, but should be filed within twenty-four hours. Lancaster County Bank v. Horn, 34 Neb. 742, 52 N.W. 562 (1892).

23-1512 Construction Lien Record.

In counties where the book form of recording instruments is used, the register of deeds shall also keep a separate book to be called the Construction Lien Record in which all instruments provided by law for securing construction liens shall be recorded.

Source: Laws 1885, c. 41, § 6, p. 222; Laws 1887, c. 30, § 8, p. 366; R.S.1913, § 5627; C.S.1922, § 4954; C.S.1929, § 26-1212; R.S. 1943, § 23-1512; Laws 1984, LB 679, § 8.

23-1513 Numerical index.

The register of deeds shall keep a numerical index. If the book form of recording is used, such index shall be as nearly as practicable in the following form:

Numerical Index						County, Nebraska															
Section			Township				Range														
			N. E. 1/4				N. W. 1/4				S. W. 1/4				S. E. 1/4						
Grantee	Grantor	Kind of Instrument																	Acres	Book	Page	Remarks

Source: Laws 1885, c. 41, § 7, p. 222; Laws 1887, c. 30, § 9, p. 366; R.S.1913, § 5628; C.S.1922, § 4955; C.S.1929, § 26-1213; R.S. 1943, § 23-1513; Laws 1984, LB 679, § 9.

Abstracter must consult numerical index as well as general index. Crook v. Chilvers, 99 Neb. 684, 157 N.W. 617 (1916).

Index is a public record, and register of deeds must report fees received for certified copy of same. State ex rel. Miller v. Sovereign, 17 Neb. 173, 22 N.W. 353 (1885).

23-1514 Numerical index; entries.

It shall be the duty of the register of deeds on receiving any conveyance or instrument affecting realty, including construction liens, to cause such conveyance or instrument to be entered upon the numerical index immediately after filing if such conveyance or instrument contains or has an exhibit attached containing the full legal description of the realty affected. Instruments purporting to release, assign, or amend a conveyance or instrument previously recorded shall contain the book and page number or microfilm or computer reference

of the previously recorded instrument and a full legal description of the realty affected.

Source: Laws 1885, c. 41, § 8, p. 223; Laws 1887, c. 30, § 10, p. 367; R.S.1913, p. 5629; C.S.1922, § 4956; C.S.1929, § 26-1214; R.S. 1943, § 23-1514; Laws 1990, LB 1153, § 53.

Numerical index and general index should both be checked by abstracter. Crook v. Chilvers, 99 Neb. 684, 157 N.W. 617 (1916).

Failure to enter mechanic's lien on numerical index does not defeat the lien if the claim for lien has in all other respects been properly recorded. Drexel v. Richards, 50 Neb. 509, 70 N.W. 23 (1897).

If deed is taken to office and fees paid therefor, it is valid as against world. Deming v. Miles, 35 Neb. 739, 53 N.W. 665 (1892); Perkins v. Strong, 22 Neb. 725, 36 N.W. 292 (1888).

Fees for certified copies of numerical index must be reported. State ex rel. Frontier County v. Kelly, 30 Neb. 574, 46 N.W. 714 (1890).

Error in entering on numerical index, where otherwise properly indexed and recorded, cannot be urged by subsequent purchasers. Lincoln B. & S. Assn. v. Hass, 10 Neb. 581, 7 N.W. 327 (1880).

23-1515 Numerical index; instrument; certificate of entry.

After such instrument has been so indexed the register of deeds shall endorse on said instrument a certificate showing that the same has been indexed as herein required, and shall thereafter record said instrument as provided by law.

Source: Laws 1885, c. 41, § 9, p. 223; Laws 1887, c. 30, § 11, p. 367; R.S.1913, § 5630; C.S.1922, § 4957; C.S.1929, § 26-1215.

Certificate of filing signed by one purporting to be register of deeds or deputy is prima facie proof that document is filed. Smith Bros. v. Woodward, 94 Neb. 298, 143 N.W. 196 (1913).

23-1516 Miscellaneous Record.

The register of deeds, if using the book form of recording, shall keep a separate book to be called the Miscellaneous Record in which all instruments and writings not entitled to be recorded in any of the books herein provided for shall be recorded.

Source: Laws 1885, c. 41, § 10, p. 224; Laws 1887, c. 30, § 12, p. 367; R.S.1913, § 5631; C.S.1922, § 4958; C.S.1929, § 26-1216; R.S. 1943, § 23-1516; Laws 1984, LB 679, § 10.

23-1517 Records; other indices.

The register of deeds shall keep indices showing all mortgages, including documents provided for in subdivision (a)(1) of section 9-501, Uniform Commercial Code, and discharges thereof left for record, and entitled to be recorded, in the same form as is required for deeds. He or she shall also keep a separate index to the volumes of construction lien records and to the volumes of miscellaneous records.

Source: Laws 1885, c. 41, § 11, p. 224; Laws 1887, c. 30, § 13, p. 368; R.S.1913, § 5632; C.S.1922, § 4959; C.S.1929, § 26-1217; R.S. 1943, § 23-1517; Laws 1969, c. 167, § 1, p. 743; Laws 1999, LB 550, § 1.

23-1517.01 Records; microfilm; requirements.

The recording of all instruments by the roll form of microfilm may be substituted for the method of recording instruments in books, and the filing of all documents by the roll form of microfilm may be substituted for the method of filing original documents. If this method of recording instruments on microfilm or filing documents on microfilm is used, the original instruments so

recorded and the original documents so filed need not be retained after the microfilm has been verified for accuracy and quality, and a security copy on silver negative microfilm in roll form must be maintained and filed off premises under safe conditions to insure the protection of the records and shall meet the microfilm standards as prescribed by the State Records Administrator as provided in sections 84-1201 to 84-1220. The fee books shall provide the proper index information as to the microfilm roll and numerical sequence of all such recorded instruments and of all such filed documents. The internal reference copies or work copies of the instruments recorded on microfilm and of documents filed on microfilm may be in any photographic form to provide the necessary information as may be determined by the official in charge.

Source: Laws 1969, c. 167, § 2, p. 743; Laws 1973, LB 224, § 7.

23-1517.02 Records; computerized system of indexing; authorized.

(1) The register of deeds may use a computerized system of indexing for deeds and conveyances, mortgages, the Construction Lien Record index, the Miscellaneous Record index, the federal lien index, the fee book, and all other supplemental indices that may be contained in such office and may combine such indices into one Land Record index. If a computerized system of indexing is used, the register of deeds may maintain a printout of all records stored in the computer system and shall have a security backup system for data and other programs in an electronic medium which shall be stored in a secure location. If maintained, the printout shall consist of a record of fees, a numerical tract index, and an alphabetical general index.

(2) In counties which do not use the computerized system provided in subsection (1) of this section, the register of deeds shall use the separate book or microfilm form of recording instruments as required prior to July 10, 1984.

Source: Laws 1984, LB 679, § 1; Laws 1988, LB 933, § 1; Laws 1998, LB 33, § 1.

23-1518 Repealed. Laws 1965, c. 107, § 1.

23-1519 Repealed. Laws 1965, c. 107, § 1.

23-1520 Repealed. Laws 1965, c. 107, § 1.

23-1521 Repealed. Laws 1965, c. 107, § 1.

23-1522 Repealed. Laws 1969, c. 433, § 10.

23-1523 Repealed. Laws 1969, c. 433, § 10.

23-1524 Repealed. Laws 1969, c. 433, § 10.

23-1525 Repealed. Laws 1969, c. 433, § 10.

23-1526 Repealed. Laws 1989, LB 5, § 7.

23-1527 Bankruptcy proceedings; recording; fee.

A certified copy of a petition, with schedules omitted, commencing a proceeding under the laws of the United States relating to bankruptcy or a certified copy of the decree of adjudication or a certified copy of an order approving the bond of the trustee appointed in such proceedings shall be filed, indexed, and

recorded in the office of the register of deeds of the county in which is located real property in which the bankrupt has an interest in the same manner as federal liens are filed, indexed, and recorded pursuant to the Uniform Federal Lien Registration Act. The filing fee for such recording shall be the same as the fee for filing and recording as set forth in section 9-525, Uniform Commercial Code. The register of deeds shall file the notices in a file kept for such purpose and designated Notice of Bankruptcy Proceedings, except that in offices filing by the roll form of microfilm pursuant to section 23-1517.01, the original notices need not be retained.

Source: Laws 1965, c. 450, § 1, p. 1422; Laws 1969, c. 433, § 8, p. 1459; Laws 1973, LB 224, § 8; Laws 1988, LB 933, § 2; Laws 1999, LB 550, § 2.

Cross References

For fees for filing and recording federal tax liens, see section 52-1003.
Uniform Federal Lien Registration Act, see section 52-1007.

ARTICLE 16
COUNTY TREASURER

Cross References

Constitutional provisions:
Election, when held, see Article XVII, section 4, Constitution of Nebraska.
Legislature, provide for election, see Article IX, section 4, Constitution of Nebraska.
Term begins, see Article XVII, section 5, Constitution of Nebraska.
Abstracting, cannot engage in, when, see section 76-504.
Deposit of county funds, see Chapter 77, article 23.
Duties respecting particular matters:
Bonds of indebtedness, see Chapter 10.
Deposit of county funds, see Chapter 77, article 23.
Drainage districts, see Chapter 31.
Fiscal agent for county, see section 10-101.
Irrigation districts, see Chapter 46.
Motor vehicles, see Chapter 60.
School funds, collection, see Chapter 79.
Taxes, generally, see Chapter 77.
Warrants, investment of sinking funds, see section 77-2334.
Elected, when, see section 32-521.
Fees:
Failure to keep correct records, penalty, see section 33-132.
Generally, see Chapter 33.
Vacancy:
How filled, see section 32-567.
Possession and control of office by deputy, see section 32-563.
Warrants, payment of, receipts, see section 77-2208.

Section

Section
23-1613. Repealed. Laws 2000, LB 692, § 13.
23-1613.01. Repealed. Laws 1959, c. 266, § 1.
23-1614. Repealed. Laws 2000, LB 692, § 13.
23-1615. Repealed. Laws 1967, c. 36, § 10.
23-1616. Cashier's bonds; amount.

23-1601 County treasurer; general duties.

(1) It is the duty of the county treasurer to receive all money belonging to the county, from whatsoever source derived and by any method of payment provided by section 77-1702, and all other money which is by law directed to be paid to him or her. All money received by the county treasurer for the use of the county shall be paid out by him or her only on warrants issued by the county board according to law, except when special provision for payment of county money is otherwise made by law.

(2) The county treasurer shall prepare and file the required annual inventory statement of county personal property in his or her custody or possession as provided in sections 23-346 to 23-350.

(3) The county treasurer, at the direction of the city or village, shall invest the bond fund money collected for each city or village located within each county. The bond fund money shall be invested by the county treasurer and any investment income shall accrue to the bond fund. The county treasurer shall notify the city or village when the bonds have been retired.

(4)(a) On or before the fifteenth day of each month, the county treasurer (i) shall pay to each city, village, school district, educational service unit, county agricultural society, and rural or suburban fire protection district located within the county the amount of all funds collected or received for the city, village, school district, educational service unit, county agricultural society, and rural or suburban fire protection district the previous calendar month, including bond fund money when requested by any city of the first class under section 16-731, and (ii) on forms provided by the Auditor of Public Accounts, shall include with the payment a statement indicating the source of all such funds received or collected and an accounting of any expense incurred in the collection of ad valorem taxes, except that the Auditor of Public Accounts shall, upon request of a county, approve the use and reproduction of a county's general ledger or other existing forms if such ledger or other forms clearly indicate the sources of all funds received or collected and an accounting of any expenses incurred in the collection of ad valorem taxes.

(b) If all such funds received or collected are less than twenty-five dollars, the county treasurer may hold such funds until such time as they are equal to or exceed twenty-five dollars. In no case shall such funds be held by the county treasurer longer than six months.

(5) Notwithstanding subsection (4) of this section, the county treasurer of any county in which a city of the metropolitan class or a Class V school district is located shall pay to the city of the metropolitan class and to the Class V school district on a weekly basis the amount of all current year funds as they become available for the city or the school district.

Source: Laws 1879, § 91, p. 379; R.S.1913, § 5637; C.S.1922, § 4964; C.S.1929, § 26-1301; Laws 1939, c. 28, § 14, p. 153; C.S.Supp.,1941, § 26-1301; R.S.1943, § 23-1601; Laws 1978, LB

847, § 1; Laws 1983, LB 391, § 1; Laws 1995, LB 122, § 1; Laws 1996, LB 604, § 2; Laws 1997, LB 70, § 1; Laws 1997, LB 85, § 1; Laws 1999, LB 287, § 1; Laws 2007, LB334, § 3.

Subsection (4) of this section and section 77-1759 can be read so as to give effect to the plain language of each. State ex rel. City of Elkhorn v. Haney, 252 Neb. 788, 566 N.W.2d 771 (1997).

County treasurer, where claims are not audited and allowed by county board or warrant drawn, is not authorized to liquidate claims from special sinking fund in his possession. Such payments are illegal. Woods v. Brown County, 125 Neb. 256, 249 N.W. 601 (1933).

With reference to public funds, the duties of a county treasurer are prescribed by statute and usage will not excuse their discharge in a different manner. Shambaugh v. City Bank of Elm Creek, 118 Neb. 817, 226 N.W. 460 (1929).

Treasurer must refuse payment of judgment until board orders payment. State ex rel. Clark & Leonard Inv. Co. v. Scotts Bluff County, 64 Neb. 419, 89 N.W. 1063 (1902).

County treasurer is insurer of money coming into his hands by virtue of his office. Thomssen v. Hall County, 63 Neb. 777, 89 N.W. 389 (1902).

Propriety or validity of depositing funds in banks cannot be questioned collaterally. Western Wheeled Scraper Co. v. Sadilek, 50 Neb. 105, 69 N.W. 765 (1897).

23-1601.01 Residency requirement.

A county treasurer elected after November 1986 need not be a resident of the county when he or she files for election as county treasurer, but a county treasurer shall reside in a county for which he or she holds office.

Source: Laws 1986, LB 812, § 5; Laws 1996, LB 1085, § 33.

23-1601.02 County treasurer; deputy; appointment; oath; duties.

The county treasurer may appoint a deputy for whose acts he or she will be responsible. The treasurer may not appoint the county clerk, sheriff, register of deeds, or surveyor as deputy.

The appointment shall be in writing and revocable in writing by the treasurer. Both the appointment and revocation shall be filed and kept in the office of the county clerk.

The deputy shall take the same oath as the treasurer which shall be endorsed upon and filed with the certificate of appointment. The treasurer may require a bond of the deputy.

In the absence or disability of the treasurer, the deputy shall perform the duties of the treasurer pertaining to the office, but when the treasurer is required to act in conjunction with or in place of another officer, the deputy cannot act in the treasurer's place.

Source: Laws 1990, LB 821, § 6.

23-1602 Warrants; nonpayment for want of funds; endorsement; interest.

All warrants issued by the county board shall, upon being presented for payment, if there are not sufficient funds in the treasury to pay the same, be endorsed by the treasurer not paid for want of funds, and the treasurer shall also endorse thereon the date of such presentation and sign his name thereto. Warrants so endorsed shall draw interest from the date of such endorsement, at the rate to be fixed by the county board at the time of issuance and inserted in the warrant. No account or claim whatsoever against a county, which has been allowed by the board, shall draw interest until a warrant shall have been drawn in payment thereof and endorsed as herein provided.

Source: Laws 1879, § 92, p. 379; R.S.1913, § 5638; C.S.1922, § 4965; C.S.1929, § 26-1302; R.S.1943, § 23-1602; Laws 1947, c. 171, § 1, p. 518; Laws 1969, c. 51, § 87, p. 329.

County is not liable for interest prior to judgment on claim to recover invalid special assessment. McClary v. County of Dodge, 176 Neb. 627, 126 N.W.2d 849 (1964).

County treasurer undertaking to pay unallowed salary claims against county from sinking fund without warrant cannot take assignments of claims and thereafter recover thereon as valid obligation of county unless sinking funds are reimbursed prior thereto. Woods v. Brown County, 125 Neb. 256, 249 N.W. 601 (1933).

Interest cannot be allowed against county unless so provided by statute or by a contract therefor lawfully made. Central Bridge & Construction Co. v. Saunders County, 106 Neb. 484, 184 N.W. 220 (1921).

Interest may be allowed against county in favor of state for money wrongfully withheld by county. State v. Stanton County, 100 Neb. 747, 161 N.W. 264 (1917).

23-1603 Violations; penalty.

If any county treasurer shall neglect or refuse to render any account or settlement required by law, or shall fail or neglect to account for any balance due the state, county, township, school district, or any other municipal subdivision, or is guilty of any other misconduct in office, the county board may forthwith remove him from office, and appoint some suitable person to perform the duties of treasurer until his successor is elected or appointed and qualified.

Source: Laws 1879, § 94, p. 380; R.S.1913, § 5640; C.S.1922, § 4967; C.S.1929, § 26-1304.

Turning over to successor certificates of deposit is not payment over of money. Cedar County v. Jenal, 14 Neb. 254, 15 N.W. 369 (1883).

In removal of county treasurer, county board must follow statutory provisions for removal of county officers, and judgment of ouster is necessary. State ex rel. Craig v. Sheldon, 10 Neb. 452, 6 N.W. 757 (1880).

23-1604 Repealed. Laws 1978, LB 650, § 40.

23-1605 Semiannual statement; publication.

The county treasurer of each county shall, during the months of July and January of each year, cause to be published in a legal newspaper, and in counties having more than two hundred fifty thousand inhabitants in a daily legal newspaper printed in the county, or if there is no legal newspaper published in the county, in a legal newspaper of general circulation within the county, a tabulated statement of the affairs of his office, showing the receipts and disbursements of his office for the last preceding six months ending June 30 and December 31.

Source: Laws 1883, c. 21, § 1, p. 182; Laws 1901, c. 23, § 1, p. 329; R.S.1913, § 5642; C.S.1922, § 4969; C.S.1929, § 26-1306; R.S. 1943, § 23-1605; Laws 1967, c. 131, § 1, p. 415; Laws 1974, LB 937, § 1.

23-1606 Semiannual statement; contents.

Such statements shall show (1) the amount of money received and for what fund; (2) the amount of warrants or orders presented and registered, and upon what fund; (3) the amount of warrants or orders paid and from what fund; (4) the amount of money on hand in each fund; (5) the amount of outstanding warrants or orders registered and unpaid; (6) the total amount of money on hand; and (7) the total amount of unpaid claims of the county as of June 15 and December 15 of each year, as certified to the county treasurer by the county clerk.

Source: Laws 1883, c. 21, § 2, p. 182; R.S.1913, § 5643; C.S.1922, § 4970; C.S.1929, § 26-1307; Laws 1935, c. 53, § 2, p. 183; C.S.Supp.,1941, § 26-1307.

23-1607 Semiannual statement; cost of publication; payment.

The county shall pay to the printer a reasonable compensation for the publication of such statement.

Source: Laws 1883, c. 21, § 3, p. 182; R.S.1913, § 5644; C.S.1922, § 4971; C.S.1929, § 26-1308.

23-1608 County officers; audit required; cost; audit report; irregularities; how treated.

(1) Each county board shall cause an examination and a complete and comprehensive annual audit to be made of the books, accounts, records, and affairs of all county officers in the county. The audits shall be conducted annually, except that the Auditor of Public Accounts may determine an audit of less frequency to be appropriate but not less than once in any three-year period. Each county board may contract with the Auditor of Public Accounts or select a licensed public accountant or certified public accountant or firm of such accountants to conduct the examination and audit and shall be responsible for the cost of the audit pursuant to the contract. An original copy of the audit report shall be filed in the office of the county clerk and in the office of the Auditor of Public Accounts within twelve months after the end of each fiscal year.

(2) The county board shall cause to be published in the same manner as the proceedings of the county board a brief statement disclosing the conclusion of the examination and audit and that such audit report is on file with the county clerk.

(3) At the same time a copy of the audit report is filed in the office of the county clerk, the auditor conducting the examination shall send written notice to the county board and the county attorney of the county concerned, the Auditor of Public Accounts, and the Attorney General of any irregularity or violation of any law disclosed by the audit report. It shall be the duty of the county attorney, within thirty days of the receipt of such notice, to institute appropriate proceedings against the offending officer or officers.

(4) If the county attorney fails to comply with the provisions of this section, it shall be the duty of the Attorney General to institute such proceedings against the offending officer or officers and he or she shall also institute proceedings for the removal of the county attorney from office. When notice is received of any irregularity or violation of any law in the office of the county attorney, it shall be the duty of the Attorney General to institute appropriate proceedings against the county attorney within thirty days after the giving of such notice if the county attorney has failed to institute such proceedings.

Source: Laws 1893, c. 15, § 1, p. 148; R.S.1913, § 5645; Laws 1919, c. 73, § 1, p. 190; Laws 1919, c. 76, § 1, p. 196; C.S.1922, § 4972; C.S.1929, § 26-1309; Laws 1937, c. 57, § 1, p. 231; C.S.Supp.,1941, § 26-1309; R.S.1943, § 23-1608; Laws 1945, c. 52, § 1, p. 236; Laws 1974, LB 280, § 1; Laws 1985, Second Spec. Sess., LB 29, § 2; Laws 1987, LB 183, § 4; Laws 2000, LB 692, § 6.

The state Auditor of Public Accounts has authority to conduct an audit of a county's records and, on behalf of the state, charge for the services rendered. County of York v. Johnson, 230 Neb. 403, 432 N.W.2d 215 (1988).

Under former law power of examination of county records was not exclusive in the Auditor of Public Accounts. Campbell v. Douglas County, 142 Neb. 773, 7 N.W.2d 764 (1943).

23-1609 Audit; requirements.

Such examination and audit shall be conducted in conformity with generally accepted auditing standards applied on a consistent basis and shall develop the county's financial condition, the condition of each county fund, and the disposition of all money collected or received. Such examination and audit shall be a full and complete audit of the cash receipts and disbursements and shall reflect in supplementary schedules the state of each county fund from which the respective claims are payable.

Source: Laws 1893, c. 15, § 2, p. 148; R.S.1913, § 5646; C.S.1922, § 4973; C.S.1929, § 26-1310; Laws 1937, c. 57, § 2, p. 232; C.S.Supp.,1941, § 26-1310; R.S.1943, § 23-1609; Laws 1979, LB 414, § 2; Laws 2000, LB 692, § 7.

23-1610 Repealed. Laws 2000, LB 692, § 13.

23-1611 County officers; uniform system of accounting; duty of Auditor of Public Accounts; individual ledger sheets; approval.

The Auditor of Public Accounts shall establish a uniform system of accounting for all county officers. The system, when established, shall be installed and used by all county officers, except that any county with a population of one hundred thousand or more inhabitants may use an accounting system that utilizes generally accepted accounting principles. With the prior approval of the Tax Commissioner, the county board of any county may direct that for all purposes of assessment of property, and for the levy and collection of all taxes and special assessments, there shall be used only individual ledger sheets or other tax records suitable for use in connection with electronic data processing equipment or other mechanical office equipment, to be used in accordance with procedures to be approved by the Tax Commissioner. To the extent practicable, the accounting system established for county officers shall be the same system established for state agencies.

Source: Laws 1893, c. 15, § 4, p. 149; R.S.1913, § 5648; Laws 1919, c. 73, § 3, p. 191; Laws 1919, c. 76, § 3, p. 197; C.S.1922, § 4975; C.S.1929, § 26-1312; Laws 1937, c. 57, § 4, p. 233; C.S.Supp.,1941, § 26-1312; R.S.1943, § 23-1611; Laws 1967, c. 132, § 1, p. 415; Laws 1969, c. 168, § 1, p. 744; Laws 1995, LB 154, § 1; Laws 1995, LB 490, § 24; Laws 2007, LB334, § 4.

Auditor of Public Accounts represents the state in settlements between the State Treasurer and the various county treasurers. State v. Ure, 102 Neb. 648, 168 N.W. 644 (1918).

23-1612 County offices; audit; refusal to exhibit records; penalty.

Every county officer, his deputy and assistants, shall, on demand, exhibit to any examiner all books, papers, records, and accounts pertaining to his office and shall truthfully answer all questions that may be put to him by such examiner touching the affairs of his office. Any person who shall fail or refuse to comply with the provisions of this section shall be guilty of a Class V misdemeanor.

Source: Laws 1893, c. 15, § 5, p. 149; R.S.1913, § 5649; Laws 1919, c. 73, § 4, p. 191; Laws 1919, c. 76, § 4, p. 197; C.S.1922, § 4976; C.S.1929, § 26-1313; R.S.1943, § 23-1612; Laws 1977, LB 40, § 97.

23-1613 Repealed. Laws 2000, LB 692, § 13.

23-1613.01 Repealed. Laws 1959, c. 266, § 1.

23-1614 Repealed. Laws 2000, LB 692, § 13.

23-1615 Repealed. Laws 1967, c. 36, § 10.

23-1616 Cashier's bonds; amount.

In all counties in the State of Nebraska having a population of two hundred thousand or more, where clerks are employed as cashiers and as such handle public funds, said clerks shall give bond in like manner as provided for county treasurers and deputy county treasurers in said counties. The bonds shall be in such sum as the county boards of said counties may determine, and the premium of the bonds shall be paid for as is now provided for said county treasurers and deputy county treasurers.

Source: Laws 1931, c. 37, § 1, p. 130; C.S.Supp.,1941, § 26-1317.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

ARTICLE 17
SHERIFF

Cross References

Constitutional provisions:
Election, when held, see Article XVII, section 4, Constitution of Nebraska.
Legislature, provide for election, see Article IX, section 4, Constitution of Nebraska.
Term begins, see Article XVII, section 5, Constitution of Nebraska.
Amercement for neglect of duty, see section 25-1545.
Attorney, practice prohibited, when, see section 7-111.
Coroner, duties performed by, when, see section 23-1817.
Deputies:
Jailer, see section 47-115.
Salary, see Chapter 23, article 11.
Duties respecting particular matters:
Civil actions, see Chapter 25.
Commissioner to convey real estate in court actions, see section 25-1327.
Criminal matters, see Chapters 28 and 29.
Jails, see Chapter 47.
Mental health commitments, see the Nebraska Mental Health Commitment Act, section 71-901 et seq.
Elected, when, see section 32-520.
Fees, see Chapter 33.
Ticket quota requirements, prohibited, see section 48-235.
Unclaimed property, sheriff duties, see sections 69-1330 to 69-1332.
Vacancy:
How filled, see section 32-567.
Possession and control of office by deputy, see section 32-563.

(a) GENERAL PROVISIONS

Section

(a) GENERAL PROVISIONS

23-1701 Sheriff; general duties; residency.

It is the duty of the sheriff to serve or otherwise execute, according to law, and return writs or other legal process issued by lawful authority and directed or committed to the sheriff and to perform such other duties as may be required by law. The county sheriff shall prepare and file the required annual inventory statement of county personal property in his or her custody or possession as provided in sections 23-346 to 23-350.

A sheriff elected after November 1986 need not be a resident of the county when he or she files for election as sheriff, but a sheriff shall reside in a county for which he or she holds office.

Source: Laws 1879, § 116, p. 384; R.S.1913, § 5653; C.S.1922, § 4980; C.S.1929, § 26-1401; Laws 1939, c. 28, § 15, p. 154; C.S.Supp.,1941, § 26-1401; R.S.1943, § 23-1701; Laws 1986, LB 812, § 6; Laws 1996, LB 1085, § 34.

Cross References

Designate persons for vehicle identification inspections, see section 60-182 et seq.

In the absence of instructions from owner of judgment or his attorney not to do so, it is the duty of sheriff to levy and make return to execution placed in his hands. Ehlers v. Gallagher, 147 Neb. 97, 22 N.W.2d 396 (1946).

Where one charged with felony is out on bail, and he is charged in court of another county with another separate and distinct felony, he is not immune to arrest on second charge, and it is duty of any sheriff in whose hands is placed warrant for his arrest on the second charge to take him into custody. State ex rel. Johnson v. Goble, 136 Neb. 242, 285 N.W. 569 (1939).

Venue of summons, laid in county where suit started and directed to sheriff of county where defendant resided, is proper. Alden Mercantile Co. v. Randall, 102 Neb. 738, 169 N.W. 433 (1918).

Return includes certification of service and delivery of writ to office from which it issued. Graves v. Macfarland, 58 Neb. 802, 79 N.W. 707 (1899).

23-1701.01 Candidate for sheriff; requirements; sheriff; attend Sheriff's Certification Course; exception; continuing education; violation; penalty.

(1) Any candidate for the office of sheriff who does not have a law enforcement officer certificate or diploma issued by the Nebraska Commission on Law Enforcement and Criminal Justice shall submit with the candidate filing form required by section 32-607 a standardized letter issued by the director of the Nebraska Law Enforcement Training Center certifying that the candidate has:

(a) Within one calendar year prior to the deadline for filing the candidate filing form, passed a background investigation performed by the Nebraska Law Enforcement Training Center based on a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol. The candidate who has not passed a background investigation shall apply for the background investigation at least thirty days prior to the filing deadline for the candidate filing form; and

(b) Received a minimum combined score on the reading comprehension and English language portions of an adult basic education examination designated by the Nebraska Law Enforcement Training Center.

(2) Each sheriff shall attend the Nebraska Law Enforcement Training Center and receive a certificate attesting to satisfactory completion of the Sheriff's Certification Course within eight months of taking office unless such sheriff has already been awarded a certificate by the Nebraska Commission on Law Enforcement and Criminal Justice attesting to satisfactory completion of such course or unless such sheriff can demonstrate to the Nebraska Police Standards Advisory Council that his or her previous training and education is such that he or she will professionally discharge the duties of the office. Any sheriff in office prior to July 19, 1980, shall not be required to obtain a certificate attesting to satisfactory completion of the Sheriff's Certification Course but shall otherwise be subject to this section. Each sheriff shall attend twenty hours of continuing education in criminal justice and law enforcement courses approved by the council each year following the first year of such sheriff's term of office. Such continuing education shall be offered through seminars, advanced education which may include college or university classes, or conferences and shall be of

a type which has application to and seeks to maintain and improve the skills of the sheriffs in carrying out the responsibilities of their office.

(3) Unless a sheriff is able to show good cause for not complying with subsection (2) of this section or obtains a waiver of the training requirements from the council, any sheriff who violates subsection (2) of this section shall be punished by a fine equal to such sheriff's monthly salary. Each month in which such violation occurs shall constitute a separate offense.

Source: Laws 1980, LB 628, § 1; Laws 1994, LB 971, § 2; Laws 2004, LB 75, § 1.

23-1701.02 Arrests; keeping the peace; duties.

It shall be the duty of every sheriff to apprehend, on view or warrant, and bring to the court all felons and disturbers and violators of the criminal laws of this state, to suppress all riots, affrays, and unlawful assemblies which may come to his or her knowledge, and generally to keep the peace in his or her proper city.

Source: Laws 1929, c. 82, art. XV, § 176, p. 324; C.S.1929, § 22-1506; R.S.1943, (1979), § 26-1,177; R.S.1943, (1985), § 24-5,100; Laws 1988, LB 1030, § 13.

23-1701.03 Sheriff; general powers and duties.

The sheriff shall exercise the powers and perform the duties conferred and imposed upon him or her by other statutes and by the common law.

Source: R.S.1867, Code § 892, p. 548; R.S.1913, § 8566; C.S.1922, § 9517; C.S.1929, § 20-2218; R.S.1943, (1989), § 25-2217; Laws 1990, LB 821, § 13.

23-1701.04 Process; duty of sheriff to execute.

It shall be the duty of the sheriffs of the several counties to execute or serve all writs and process issued by any county court and to them directed and to return the same. For any neglect or refusal so to do, they may be proceeded against in the county court in the same manner as for neglect or refusal to execute or serve process issued out of the district court.

Source: G.S.1873, c. 14, § 24, p. 268; R.S.1913, § 1227; C.S.1922, § 1150; C.S.1929, § 27-519; R.S.1943, § 24-520; Laws 1972, LB 1032, § 34; R.S.1943, (1989), § 24-534; Laws 1990, LB 821, § 10.

23-1701.05 Writs and orders; endorsement.

The sheriff shall endorse upon every summons, order of arrest, order for the delivery of property, order of attachment, or injunction the day and the hour it was received by him or her.

Source: R.S.1867, Code § 890, p. 548; R.S.1913, § 8564; C.S.1922, § 9515; C.S.1929, § 20-2216; R.S.1943, (1989), § 25-2215; Laws 1990, LB 821, § 11.

Cross References

Fees, see section 33-117.

23-1701.06 Failure or neglect to execute process; amercement; civil liability.

The sheriff shall execute every summons, order, or other process and return the same as required by law. If the sheriff fails to do so, unless he or she makes it appear to the satisfaction of the court that he or she was prevented by inevitable accident from so doing, he or she shall be amerced by the court in a sum not exceeding one thousand dollars and shall be liable to the action of any person aggrieved by such failure.

Source: R.S.1867, Code § 891, p. 548; R.S.1913, § 8565; C.S.1922, § 9516; C.S.1929, § 20-2217; R.S.1943, (1989), § 25-2216; Laws 1990, LB 821, § 12.

Where judgment creditor fails to show any damage resulting from failure to make levy or return of execution, recovery against officer cannot be had. Ehlers v. Gallagher, 147 Neb. 97, 22 N.W.2d 396 (1946).

Where code is silent, common law and equity remedies, not inconsistent therewith, are applicable to prevent failure of justice. Cross-petition is maintainable. Armstrong v. Mayer, 69 Neb. 187, 95 N.W. 51 (1903).

''Return'' includes certificates and delivery of writ to office from whence issued. Graves v. Macfarland, 58 Neb. 802, 79 N.W. 707 (1899).

23-1702 Violations; penalty.

The disobedience by the sheriff of the command of any such process is a contempt of the court from which it was issued, and may be punished by the same accordingly, and he is further liable to the action of any person injured thereby.

Source: Laws 1879, § 117, p. 385; R.S.1913, § 5654; C.S.1922, § 4981; C.S.1929, § 26-1402.

Officer is liable in damages for failure to make return to execution. Ehlers v. Gallagher, 147 Neb. 97, 2 N.W.2d 396 (1946).

Court will mandamus sheriff to make arrest when proper warrant from another county is placed in his hands and he refuses to act. State ex rel. Johnson v. Goble, 136 Neb. 242, 285 N.W. 569 (1939).

Sheriff is not liable for negligence in levy of writ where plaintiff or his attorney contributed to negligence. Parrott v. McDonald, 72 Neb. 97, 100 N.W. 132 (1904).

23-1703 Jailer; duty of sheriff; certain counties.

Except in counties where a county board of corrections exists and has assumed responsibility over the jail pursuant to sections 23-2801 to 23-2806, the sheriff shall have charge and custody of the jail, and the prisoners of the same, and is required to receive those lawfully committed and to keep them himself or herself, or by his or her deputy jailer, until discharged by law.

Source: Laws 1879, § 118, p. 385; R.S.1913, § 5655; C.S.1922, § 4982; C.S.1929, § 26-1403; R.S.1943, § 23-1703; Laws 1979, LB 396, § 1; Laws 1984, LB 394, § 1.

Jury was properly instructed as to the duties of the sheriff as jailer under this section. O'Dell v. Goodsell, 152 Neb. 290, 41 N.W.2d 123 (1950).

It is duty of sheriff to receive and keep until discharged all prisoners lawfully committed to county jail. O'Dell v. Goodsell, 149 Neb. 261, 30 N.W.2d 906 (1948).

Sheriff has charge of county jail and is the custodian thereof. Flint v. Mitchell, 148 Neb. 244, 26 N.W.2d 816 (1947).

Judgment in criminal action, imposing jail sentence and fine and remanding defendant to custody of sheriff to carry out sentence and judgment, is equivalent to judgment requiring defendant to be confined to jail until the fine is paid. State ex rel. Marasco v. Mundell, 127 Neb. 673, 256 N.W. 519 (1934).

Sheriff must keep prisoners who are sentenced for violating city ordinances, but he collects from county, not city. Douglas County v. Coburn, 34 Neb. 351, 51 N.W. 965 (1892).

23-1704 Assistants; power to summon.

The sheriff and his deputies are conservators of the peace, and to keep the same, to prevent crime, to arrest any person liable thereto, or to execute process of law, they may call any person to their aid; and, when necessary, the sheriff may summon the power of the county.

Source: Laws 1879, § 119, p. 385; R.S.1913, § 5656; C.S.1922, § 4983; C.S.1929, § 26-1404.

City police officers may not make warrantless misdemeanor arrests outside their jurisdiction. State v. Tingle, 239 Neb. 558, 477 N.W.2d 544 (1991).

A sheriff has the power to summon to his assistance in the arrest of felons police officers of the cities of the second class under this section. Henning v. City of Hebron, 186 Neb. 381, 183 N.W.2d 756 (1971).

Sheriff has authority to call a private citizen into service to help capture prisoner. Anderson v. Bituminous Casualty Co., 155 Neb. 590, 52 N.W.2d 814 (1952).

Persons summoned as posse are not strictly deputies and sheriff is not liable to them for compensation, if entitled to any. Power v. Douglas County, 75 Neb. 734, 106 N.W. 782 (1906).

Duties of sheriff as conservator of peace are applicable to chief of police in metropolitan city. Moores v. State ex rel. Dunn, 71 Neb. 522, 99 N.W. 249 (1904), 115 Am. S.R. 605 (1904).

This section authorizes a deputy sheriff to summon a State Patrol trooper and a city police officer to assist in arresting a suspected intoxicated driver. Once summoned, those persons become de facto deputies. State v. Rodgers, 2 Neb. App. 360, 509 N.W.2d 668 (1993).

23-1704.01 Sheriff; deputies; appointment; oath; duties.

The sheriff may appoint such number of deputies as he or she sees fit for whose acts he or she will be responsible. The sheriff may not appoint the county treasurer, clerk, register of deeds, or surveyor as deputy.

The appointment shall be in writing and revocable in writing by the sheriff. Both the appointment and revocation shall be filed and kept in the office of the county clerk.

The deputy shall take the same oath as the sheriff which shall be endorsed upon and filed with the certificate of appointment. The sheriff may require a bond of the deputy.

In the absence or disability of the sheriff, the deputy shall perform the duties of the sheriff pertaining to the office, but when the sheriff is required to act in conjunction with or in place of another officer, the deputy cannot act in the sheriff's place. No deputy shall act as constable while deputy sheriff.

Source: R.S.1866, c. 15, § 4, p. 127; R.S.1913, § 5738; C.S.1922, § 5067; Laws 1923, c. 43, § 1, p. 158; C.S.1929, § 84-804; R.S.1943, (1981), § 84-804; Laws 1990, LB 821, § 7.

Deputy sheriff, acting as jailer is public officer, and county board cannot contract with him for different compensation than fixed by law. Scott v. Scotts Bluff County, 106 Neb. 355, 183 N.W. 573 (1921).

County board must fix number and compensation of sheriff's deputies, under act requiring board to furnish sheriff with such deputies as they deem necessary, but sheriff has power to appoint. State ex rel. Rohrs v. Harris, 100 Neb. 745, 161 N.W. 253 (1917).

When office of sheriff was a fee office, a deputy sheriff was required to look to fees for his salary. Power v. Douglas County, 75 Neb. 734, 106 N.W. 782 (1906).

23-1704.02 Sheriff; appoint employee.

Except when otherwise provided specifically by law for substitute service by a deputy, a sheriff may appoint an employee of his or her department to serve any summons or writ, by endorsement thereon substantially as follows: ''I hereby appoint ..... to serve the within writ;'' which shall be dated and signed by the sheriff.

Source: Laws 1879, § 125, p. 386; R.S.1913, § 5739; C.S.1922, § 5068; C.S.1929, § 84-805; R.S.1943, (1981), § 84-805; Laws 1987, LB 223, § 2.

Authority is conferred upon a sheriff to depute a person to serve any summons. Forbes v. Bringe, 32 Neb. 757, 49 N.W. 720 (1891).

Constables cannot appoint deputies. Gilbert and Artist v. Brown & Brother, 9 Neb. 90, 2 N.W. 376 (1879).

23-1704.03 Sheriff; employee; false return of writ; penalty.

The employee referred to in section 23-1704.02 shall make return of the time and manner of serving such writ under his or her oath. For making a false return he or she shall be guilty of perjury and shall be punished accordingly.

Source: Laws 1879, § 126, p. 386; R.S.1913, § 5740; C.S.1922, § 5069; C.S.1929, § 84-806; R.S.1943, (1981), § 84-806; Laws 1987, LB 223, § 3.

23-1704.04 Sheriff; deputies; compensation.

The county board shall furnish the sheriff with such deputies as it shall deem necessary and fix the compensation of such deputies who shall be paid by warrant drawn on the general fund.

Source: Laws 1907, c. 54, § 2, p. 228; Laws 1911, c. 50, § 1, p. 233; R.S.1913, § 2443; Laws 1917, c. 44, § 1, p. 124; Laws 1919, c. 81, § 1, p. 203; Laws 1921, c. 114, § 1, p. 396; C.S.1922, § 2383; Laws 1923, c. 83, § 1, p. 224; Laws 1927, c. 121, § 1, p. 334; C.S.1929, § 32-122; Laws 1943, c. 90, § 20, p. 306; R.S.1943, (1988), § 33-118; Laws 1990, LB 821, § 8.

County board is given the right to determine number of deputies a sheriff may employ. Grace v. County of Douglas, 178 Neb. 690, 134 N.W.2d 818 (1965).

The county board has the authority to determine the number of deputies to be appointed by the sheriff and to fix their compensation but the sheriff retains the power to appoint his deputies. State ex rel. Rohrs v. Harris, 100 Neb. 745, 161 N.W. 253 (1917).

A sheriff who does not elect to act as jailer in person, but who deputizes the persons who perform the duties of jailer, such persons being compensated in the manner provided by this section, is not entitled to the compensation provided for a sheriff acting as jailer. Dunkel v. Hall County, 89 Neb. 585, 131 N.W. 973 (1911).

23-1705 Court attendance; when required.

The sheriff shall attend upon the district court at its session in his or her county, shall be allowed the assistance of two deputies and of such further number as the court may direct, and shall attend the sessions of the county court when required by the judge.

Source: Laws 1879, § 120, p. 385; R.S.1913, § 5657; C.S.1922, § 4984; C.S.1929, § 26-1405; R.S.1943, § 23-1705; Laws 1988, LB 1030, § 6.

23-1706 Court; appearance as counsel prohibited.

No sheriff or his deputy or constable shall appear in any court as attorney or counselor for any party, nor make any writing or process to commence or to be in any manner used in the same, and such writing or process made by any of them shall be rejected.

Source: Laws 1879, § 121, p. 385; R.S.1913, § 5658; C.S.1922, § 4985; C.S.1929, § 26-1406.

Cross References

For provisions prohibiting sheriff to practice as attorney, see section 7-111.

23-1707 Sheriff's sales; purchases prohibited.

No sheriff or his deputy or constable shall become the purchaser, either directly or indirectly, of any property by him exposed to sale under any process of law or equity; and every such purchase is absolutely void.

Source: Laws 1879, § 122, p. 385; R.S.1913, § 5659; C.S.1922, § 4986; C.S.1929, § 26-1407.

23-1708 Vacancy; legal process; deputy; duty.

In case of a vacancy occurring in the office of sheriff from any cause the deputy or deputies shall be under obligation to execute legal process until the vacancy is filled.

Source: Laws 1879, § 123, p. 385; R.S.1913, § 5660; C.S.1922, § 4987; C.S.1929, § 26-1408; R.S.1943, § 23-1708; Laws 1990, LB 872, § 1.

Sheriff may complete execution of order of sale regularly issued to him during his term, after expiration of his term. National Black River Bank v. Wall, 3 Neb. Unof. 316, 91 N.W. 525 (1902).

23-1709 Term of office; expiration; transfers to successor.

When a sheriff goes out of office he or she shall deliver to his or her successor all books and papers pertaining to the office, all property attached or levied upon, and all prisoners in jail and shall take a receipt specifying the same. The receipt shall be sufficient indemnity to the person taking it.

Source: Laws 1879, § 124, p. 386; R.S.1913, § 5661; C.S.1922, § 4988; C.S.1929, § 26-1409; R.S.1943, § 23-1709; Laws 1990, LB 872, § 2.

23-1710 Crimes; prevention; arrest; powers and duties.

It shall be the duty of the sheriff by himself or deputy to preserve the peace in his county, to ferret out crime, to apprehend and arrest all criminals, and insofar as it is within his power, to secure evidence of all crimes committed in his county, and present the same to the county attorney and the grand jury; to file informations against all persons who he knows, or has reason to believe, have violated the laws of the state, and to perform all other duties pertaining to the office of sheriff.

Source: Laws 1917, c. 231, § 1, p. 567; C.S.1922, § 4989; C.S.1929, § 26-1410.

Where sheriff had reliable information about existence of incendiary device action in going upon property and inspecting for existence of fire without actual entry or search of building was proper. State v. Howard, 184 Neb. 274, 167 N.W.2d 80 (1969).

Sheriff has duty to apprehend and arrest all criminals and must, if necessary, follow them into any county to do so. State ex rel. Johnson v. Goble, 136 Neb. 242, 285 N.W. 569 (1939).

Sheriff is not disqualified because of interest when testimony as witness is merely corroborative. Noonan v. State, 117 Neb. 520, 221 N.W. 434 (1928).

23-1711 Special investigations; when authorized; report; expenses.

The sheriff shall, whenever directed so to do in writing by the county attorney, make special investigation of any alleged infraction of the law within his county, and report with reference thereto within a reasonable time to such county attorney. When such investigation is made the sheriff shall file with the county clerk a detailed, sworn statement of his expenses, accompanied by the written order of the county attorney, and the board shall audit and allow only so much thereof as it shall find reasonable and necessary.

Source: Laws 1917, c. 231, § 2, p. 567; C.S.1922, § 4990; C.S.1929, § 26-1411.

23-1712 Repealed. Laws 1991, LB 153, § 1.

23-1713 Sheriff; party to judicial proceedings; duties; county clerk shall perform.

Every county clerk shall serve and execute process of every kind, and perform all other duties of the sheriff, when the sheriff shall be a party to the case, or whenever affidavits shall be made and filed as provided in section 23-1714; and in all such cases he shall exercise the same powers and proceed in the same manner as prescribed for the sheriff in the performance of similar duties.

Source: Laws 1881, c. 42, § 1, p. 222; R.S.1913, § 5683; Laws 1915, c. 101, § 1, p. 244; C.S.1922, § 5013; C.S.1929, § 26-1522.

Sheriff is disqualified from serving process in murder case, where affidavit of disqualification was filed, and it became duty of clerk of district court to issue writ for summoning jurors to county clerk. Trobough v. State, 120 Neb. 453, 233 N.W. 452 (1930).

Sheriff is disqualified to select and summon a special panel of jurors to serve in criminal case in which he is a prosecuting witness. Policky v. State, 113 Neb. 858, 205 N.W. 560 (1925).

Processes issued out of county court may be directed to and be served by coroner, when sheriff is party. Barlass v. May, 16 Neb. 647, 21 N.W. 436 (1884).

Coroner may serve writ of replevin whenever sheriff is party to the action. Keith Brothers v. Heffelfinger, 12 Neb. 497, 11 N.W. 749 (1882).

23-1714 Sheriff; disqualification; duties; county clerk shall perform.

Whenever any party, his agent or attorney shall make and file with the clerk of the proper court an affidavit stating that he believes the sheriff of such county will not, by reason of partiality, prejudice, consanguinity or interest, faithfully perform his duties in any suit commenced, or about to be commenced, in said court, the clerk shall direct the original or other process in such suit to the county clerk who shall execute the same in like manner as the sheriff might or ought to have done, and if like objections shall be made to the county clerk by either party, the court shall appoint some suitable person to whom such objection does not apply.

Source: Laws 1881, c. 42, § 2, p. 222; R.S.1913, § 5684; Laws 1915, c. 101, § 1, p. 244; C.S.1922, § 5014; C.S.1929, § 26-1523.

Affidavit being filed hereunder, sheriff is ipso facto disqualified from summoning jurors, but not from participating with court clerk in drawing panel from box containing jurors' names selected by county commissioners. Trobough v. State, 120 Neb. 453, 233 N.W. 452 (1930).

When showing is made conforming to above provisions, it is mandatory that clerk direct county clerk to perform the duties of the sheriff. Policky v. State, 113 Neb. 858, 205 N.W. 560 (1925).

A party must make his objection to sheriff's acting before trial or he will be held to have waived it. Coil v. State, 62 Neb. 15, 86 N.W. 925 (1901).

23-1715 Sheriff; specialized equipment; damages to privately owned motor vehicle, reimbursement.

The county board shall purchase a base radio station and shortwave radio equipment for installation on a motor vehicle owned by the sheriff. The county board may purchase shortwave radio equipment for installation on motor vehicles owned by the sheriff's deputies and also may purchase specialized equipment such as, but not limited to, flashing lights or spotlights for installation on motor vehicles owned by the sheriff or his or her deputies whenever such equipment is necessary for law enforcement work. Any equipment so purchased and installed shall remain the property of the county and shall be removed and returned to the county upon termination of the term of office of such sheriff or deputy. The county board may also reimburse any such sheriff or deputy for any damage to any such privately owned motor vehicle peculiarly incident to and actually arising out of the use of such motor vehicle for law enforcement work, such as, but not limited to, bullet holes, blood stains, or damage to the interior caused by unruly prisoners, but not including collision or upset. Reimbursement for such damage shall be paid as other claims against the county.

Source: Laws 1959, c. 84, § 7, p. 390; Laws 1969, c. 169, § 1, p. 745; Laws 1975, LB 427, § 1; Laws 2000, LB 893, § 1.

23-1716 Repealed. Laws 1972, LB 1278, § 3.

23-1717 Sheriff; deputy; uniform; badge, display; exceptions.

County sheriffs and their deputies, when on duty, shall be dressed in a distinctive uniform, as described in section 23-1719, and display a badge of

office as described in section 23-1719; *Provided*, the wearing of such uniform and badge shall be discretionary at the option of the sheriff when he or she or his or her deputies are engaged in special investigations or mental patient assignments; *and provided further*, that special deputies appointed by the sheriff shall be excluded from the requirements of this section.

Source: Laws 1967, c. 113, § 1, p. 361; Laws 1981, LB 186, § 1.

23-1718 Sheriff; deputy; uniform; allowance in counties of less than 200,000 population.

County sheriffs and their deputies in counties of less than two hundred thousand population shall each receive an allowance for uniform expense of not less than ten dollars per month, to be paid by the county which such officers serve.

Source: Laws 1967, c. 113, § 2, p. 361.

23-1719 Sheriff; deputy; uniform; specifications.

(1) The uniform required by section 23-1717 shall be readily distinguishable from the uniform of other law enforcement agencies in the State of Nebraska and shall consist of:

(a) Brown felt hat, center crease in sheriff or western style;

(b) Brown straw hat, center crease in sheriff or western style;

(c) Chocolate brown color shirt with either long or short sleeves depending on season;

(d) Pink tan color trousers in appropriate seasonal weights;

(e) Pink tan color skirts in appropriate seasonal weights;

(f) Pink tan color necktie;

(g) Shoes or boots in the same color as the leather worn;

(h) Chocolate brown color service jacket, zipper front with badge holder;

(i) Hip-length year-round outer jacket, dark brown in color;

(j) Badge bearing state or state seal, rank, and county:

(i) Gold in color for sheriff and deputies of the rank of sergeant or above;

(ii) Silver in color for deputies under the rank of sergeant; and

(iii) Consisting of seven-point star;

(k) Collar ornaments:

(i) Gold for sheriff and deputies of the rank of sergeant or above; and

(ii) Silver for deputies under the rank of sergeant;

(l) Shoulder emblem to be worn on upper sleeve and include sheriff's department and county name - design optional;

(m) Leather to be either brown or black at the individual department's choice; and

(n) Brown winter cap with flap.

(2) Uniforms shall be purchased directly from the supplier or suppliers with whom the Department of Administrative Services has contracted.

(3) A committee from the Nebraska Sheriffs' and Peace Officers' Association shall assist the Department of Administrative Services in developing specifications and selecting material for the uniforms.

Source: Laws 1967, c. 113, § 3, p. 361; Laws 1981, LB 186, § 2.

23-1720 Sheriff; deputies; indemnification; legal counsel.

Any sheriff, deputy state sheriff, deputy sheriff, or special deputy sheriff required to be bonded under section 11-119 or 23-1704.01 shall be indemnified by the county employing such sheriff, deputy state sheriff, deputy sheriff, or special deputy sheriff should such person become liable to any surety on a bond written under either such section. Any sheriff, deputy state sheriff, deputy sheriff, or special deputy sheriff may, with the approval of the county board, retain his or her own legal counsel to represent him or her in such proceedings at county expense.

Source: Laws 1969, c. 143, § 1, p. 664; Laws 1990, LB 821, § 9.

(b) MERIT SYSTEM

23-1721 Sections; purposes.

The purposes of sections 23-1721 to 23-1736 are to guarantee to all citizens a fair and equal opportunity for public service in the office of the county sheriff in counties having a population of twenty-five thousand inhabitants or more, to establish and review conditions of service which will attract officers and employees of character and capacity, and to increase the efficiency of the county sheriff's office by the establishment of a merit system.

Source: Laws 1969, c. 140, § 1, p. 642; Laws 1972, LB 1093, § 1; Laws 1975, LB 315, § 1; Laws 1977, LB 122, § 1; Laws 1982, LB 782, § 1; Laws 2003, LB 222, § 1.

The purpose of this act is not to remove from the sheriff the right to discipline his personnel but, rather, to insulate deputy sheriffs from the political hazards which they might encounter upon the election of a new sheriff. Freese and Johnson v. County of Douglas, 210 Neb. 521, 315 N.W.2d 638 (1982).

23-1722 Sheriff's office merit commission; created; county having 25,000 inhabitants or more.

In any county having a population of twenty-five thousand inhabitants or more, there shall be a sheriff's office merit commission.

Source: Laws 1969, c. 140, § 2, p. 642; Laws 1972, LB 1093, § 2; Laws 1975, LB 315, § 2; Laws 1977, LB 122, § 2; Laws 1982, LB 782, § 2.

23-1723 Sheriff's office merit commission; county having 300,000 or more population; members; number; appointment; term; vacancy.

The sheriff's office merit commission in counties having a population of three hundred thousand inhabitants or more shall consist of five members. One member shall be a duly elected county official, appointed by the county board. One member shall be a deputy sheriff, elected by the deputy sheriffs. Three members shall be selected by the presiding judge of the judicial district encompassing such county and shall be public representatives who are residents of the county. The terms of office of members initially appointed or elected shall expire on January 1 of the first, second, and third years following

their appointment or election, as designated by the county board. As the terms of initial members expire, their successors shall be appointed or elected for three-year terms in the same manner as the initial members. The additional public representative provided for in this section shall serve until January 1, 1984, and thereafter his or her successors shall be appointed or elected for three-year terms. Any vacancy shall be filled by appointment or election in the same manner as appointment or election of initial members. The commission shall have the power to declare vacant the position of any member who no longer meets the qualifications for election or appointment set out in this section.

Source: Laws 1969, c. 140, § 3, p. 643; Laws 1972, LB 1093, § 3; Laws 1974, LB 782, § 6; Laws 1977, LB 304, § 1; Laws 1983, LB 81, § 1; Laws 2003, LB 222, § 2.

23-1723.01 Sheriff's office merit commission; county having 25,000 to 300,000 population; members; number; appointment; term; vacancy.

(1) In counties having a population of not less than twenty-five thousand inhabitants and less than three hundred thousand inhabitants, the sheriff's office merit commission shall consist of three members, except that the membership of the commission may be increased to five members by unanimous vote of the three-member commission.

(2) If the commission consists of three members, one member shall be a duly elected county official, appointed by the county board, one member shall be a deputy sheriff, elected by the deputy sheriffs, and one member shall be selected by the presiding judge of the judicial district encompassing such county and shall be a public representative who is a resident of the county and neither an official nor employee of the county. If the commission consists of five members, one member shall be a duly elected county official, appointed by the board of county commissioners, two members shall be deputy sheriffs, elected by the deputy sheriffs, and two members shall be selected by the presiding judge of the judicial district encompassing such county and shall be public representatives who are residents of the county and neither officials nor employees of the county.

(3) The terms of office of members initially appointed or elected after March 20, 1982, shall expire on January 1 of the years 1983, 1984, and 1985, as designated by the county board. Thereafter, the terms of the members of the commission shall be three years, except that in a county with a five-member commission, (a) the initial term of the additional deputy sheriff member shall be staggered so that his or her term shall coincide with the term of such county's deputy sheriff elected before August 31, 2003, and (b) the initial term of the additional public representative member shall be staggered so that his or her term shall coincide with the term of such county's public representative member appointed before August 31, 2003. As the terms of initial members expire, their successors shall be appointed or elected in the same manner as the initial members. Any vacancy shall be filled by appointment or election in the same manner as appointment or election of initial members. The commission shall have the power to declare vacant the position of any member who no longer meets the qualifications for election or appointment set out in this section.

Source: Laws 1977, LB 304, § 2; Laws 1982, LB 782, § 3; Laws 2003, LB 40, § 1; Laws 2003, LB 222, § 3.

23-1724 Sheriff's office merit commission; members; salary; expenses.

The members of the commission shall not receive a salary for their services but shall be reimbursed for such necessary expenses and mileage as may be incurred in the actual performance of their duties with reimbursement for mileage to be made at the rate provided in section 81-1176.

Source: Laws 1969, c. 140, § 4, p. 643; Laws 1981, LB 204, § 29; Laws 1996, LB 1011, § 12.

23-1725 Commission; meetings; public; rules of procedure; adopt.

The sheriff's office merit commission shall hold meetings regularly, at least once every three months, and shall designate the time and place thereof. It shall adopt its own rules of procedure and shall keep a record of its proceedings. All meetings and records of the commission shall be public except as otherwise provided in sections 23-1721 to 23-1736.

Source: Laws 1969, c. 140, § 5, p. 643; Laws 2003, LB 222, § 4.

23-1726 Classified service, defined.

For purposes of sections 23-1721 to 23-1736, classified service includes all deputy sheriffs including the jailer and matrons but does not include the civilian employees of the office. The deputy sheriff designated by the sheriff as chief deputy is specifically excluded from sections 23-1721 to 23-1736.

Source: Laws 1969, c. 140, § 6, p. 643; Laws 2003, LB 222, § 5.

23-1727 Commission; powers; duties.

The powers and duties of the sheriff's office merit commission shall be as follows:

(1) To adopt rules not inconsistent with sections 23-1721 to 23-1736 for the examination and selection of persons to fill the offices and positions in the classified service which are required to be filled by appointment and for the selection of such persons to be employed in the classified service of the office of the sheriff;

(2) To supervise the administration of the merit system rules, hold examinations from time to time after giving notice thereof, prepare and keep an eligibility list of persons passing such examinations, and certify the names of persons thereon to the sheriff;

(3) To investigate, by itself or otherwise, the enforcement of sections 23-1721 to 23-1736 and of its own rules and the action of appointees in the classified service. In the course of such investigation, the commission, or its authorized representative, shall have the power to administer oaths, and the commission shall have power, by subpoena, to secure both the attendance and testimony of witnesses and the production of books and papers relevant to such investigation;

(4) To provide, through the purchasing department of the county, all needed supplies for the use of the commission;

(5) To classify deputy sheriffs and subdivide them into groups according to rank and grade based upon the duties and responsibilities of such positions. The commission shall recommend to the county board salaries which are

uniform for each group of the classified service and comparable to those of comparable counties in this section of the United States; and

(6) To perform such other duties as may be necessary to carry out sections 23-1721 to 23-1736.

Source: Laws 1969, c. 140, § 7, p. 643; Laws 2003, LB 222, § 6.

The powers enumerated in this section are intended to provide a form of civil service to deputy sheriffs employed by the various counties. Freese and Johnson v. County of Douglas, 210 Neb. 521, 315 N.W.2d 638 (1982).

23-1728 Commission; competitive examinations; records of service; keep; subject to inspection by commission.

(1) The commission shall prepare and hold open competitive examinations in order to test the relative fitness of all applicants for appointment to the classified service. At least two weeks' notice shall be given of all such examinations by publication at least once in a legal newspaper published and of general circulation in the county or, if none is published in the county, in a legal newspaper of general circulation in the county.

(2) The commission shall cause to be kept records of the service of each employee, in the classified service, known as service records. These records shall contain facts and statements on all matters relating to the character and quality of the work done and the attitude of the individual toward his or her work. All such service records and employee records shall be subject only to the inspection of the commission.

Source: Laws 1969, c. 140, § 8, p. 644; Laws 1986, LB 960, § 21.

23-1729 Sheriff; personnel director; duties.

The sheriff of each county under sections 23-1721 to 23-1736 shall be the personnel director of the merit system. The personnel director shall act as secretary of the sheriff's office merit commission and shall advise the commission in all matters pertaining to the merit system established by sections 23-1721 to 23-1736.

Source: Laws 1969, c. 140, § 9, p. 645; Laws 2003, LB 222, § 7.

23-1730 Deputy sheriffs; classified service; chief deputy sheriff.

For purposes of sections 23-1721 to 23-1736, all deputy sheriffs actually serving as such shall comprise the classified service. The chief deputy sheriff shall not be within the classified service, but a deputy sheriff serving with permanent rank under sections 23-1721 to 23-1736 may be designated chief deputy sheriff and retain such rank during the period of his or her service as chief deputy sheriff and shall upon termination of his or her duties as chief deputy sheriff revert to his or her permanent rank.

Source: Laws 1969, c. 140, § 10, p. 645; Laws 2003, LB 222, § 8.

23-1731 Classified service; vacancy; how filled.

Whenever a position in the classified service is to be filled, the sheriff shall notify the sheriff's office merit commission of that fact, and the commission shall certify the names and addresses of the three candidates standing highest on the eligibility list for the class or grade for the position to be filled, and the sheriff shall forthwith appoint to such position one of the three persons so certified. Such appointment shall be for a probationary period to be fixed by the

rules, but not to exceed one year. On or before the expiration of the probationary period, the sheriff may, by presenting specific reasons for such action in writing, discharge a probationary appointee, or, with the approval of the commission, transfer him or her to another department within the sheriff's office. If not discharged prior to the expiration of the period of probation and if no complaint has been made about the service rendered, the appointment shall be deemed permanent. To prevent the stoppage of business or to meet extraordinary conditions or emergencies, the sheriff may, with the approval of the commission, make a temporary appointment to remain in force for not to exceed sixty days and only until regular appointment can be made under sections 23-1721 to 23-1736.

Source: Laws 1969, c. 140, § 11, p. 645; Laws 1982, LB 729, § 1; Laws 2003, LB 222, § 9.

23-1732 Deputy sheriffs in active employment; examinations; when required.

(1) All deputy sheriffs in active employment on January 1, 1970, in counties of three hundred thousand inhabitants or more and on January 1, 1973, in counties having a population of more than one hundred fifty thousand but less than three hundred thousand inhabitants, and who have been such for more than two years immediately prior thereto, shall hold their positions without examinations until discharged, reduced, promoted, or transferred in accordance with sections 23-1721 to 23-1736.

(2) All deputy sheriffs in active employment on January 1, 1975, in counties having a population of more than sixty thousand but not more than one hundred fifty thousand inhabitants, and who have been deputy sheriffs for more than two years immediately prior thereto, or who have been certified by the Nebraska Law Enforcement Training Center and who have received a certificate of completion shall hold their positions without examinations until discharged, reduced, promoted, or transferred in accordance with sections 23-1721 to 23-1736.

(3) All deputy sheriffs in active employment on January 1, 1977, in counties having a population of more than forty thousand but not more than sixty thousand inhabitants, and who have been deputy sheriffs for more than two years immediately prior thereto, or who have been certified by the Nebraska Law Enforcement Training Center and who have received a certificate of completion shall hold their positions without examinations until discharged, reduced, promoted, or transferred in accordance with sections 23-1721 to 23-1736.

(4) All deputy sheriffs in active employment on January 1, 1982, in counties having a population of twenty-five thousand or more but not more than forty thousand inhabitants, and who have been deputy sheriffs for more than two years immediately prior thereto, or who have been certified by the Nebraska Law Enforcement Training Center, and who have received a certificate of completion shall hold their positions without examinations until discharged, reduced, promoted, or transferred in accordance with sections 23-1721 to 23-1736.

(5) All deputy sheriffs who have been so employed for more than six months and less than two years on such date shall be required to take qualifying examinations, and all such deputy sheriffs who have been so employed for less

than six months on such date shall be required to take competitive examinations.

Source: Laws 1969, c. 140, § 12, p. 646; Laws 1972, LB 1093, § 4; Laws 1975, LB 315, § 3; Laws 1977, LB 122, § 3; Laws 1982, LB 782, § 4; Laws 2003, LB 222, § 10.

23-1733 Promotions; procedure.

Whenever possible, vacancies shall be filled by promotion. Promotion shall be made from among deputy sheriffs qualified by training and experience to fill the vacancies and whose length of service entitles them to consideration. The commission shall, for the purpose of certifying to the sheriff the list of deputy sheriffs eligible for promotion, rate such deputy sheriffs so qualified on the basis of their service record, experience in the work involved in the vacant position, training and qualifications for such work, seniority, and military service ratings. Seniority shall be controlling only when other factors are equal. Only the names of the three highest on the list of ratings shall be certified. The sheriff shall forthwith appoint one of the three persons so qualified.

Source: Laws 1969, c. 140, § 13, p. 646.

23-1734 Deputy sheriff; removal, suspension, reduced in rank or grade; procedure; grievance; procedure.

(1) Any deputy sheriff may be removed, suspended, or reduced in either rank or grade or both rank and grade by the sheriff, after appointment or promotion is complete, by an order in writing, stating specifically the reasons therefor. Such order shall be filed with the sheriff's office merit commission and a copy thereof shall be furnished to the person so removed, suspended, or reduced. Any person so removed, suspended, or reduced in either rank or grade or both rank and grade may, within ten days after presentation to him or her of the order of removal, suspension, or reduction, appeal to the commission from such order. The commission shall, within two weeks from the filing of such appeal, hold a hearing thereon, and thereupon fully hear and determine the matter, and either affirm, modify, or revoke such order. The appellant shall be entitled to appear personally, produce evidence, and have counsel and a public hearing. The finding and decision of the commission shall be certified to the sheriff and shall forthwith be enforced and followed, but under no condition shall the employee who has appealed to the commission be permanently removed, suspended, or reduced in rank until such finding and decision of the commission is so certified to the sheriff.

(2) Any deputy sheriff may grieve a violation of an employment contract, a personnel rule, a state or local law, or a written departmental policy or procedure to the commission. The commission shall hear the grievance at the next regularly scheduled meeting, or the commission may, at its discretion, set a special meeting to hear the grievance. If the deputy sheriff is subject to a labor agreement, all applicable procedures in the agreement shall be followed prior to the matter being heard by the commission. In all other cases, the matter shall be grieved, in writing, to the commission within fifteen calendar days after the date the deputy became aware of the occurrence giving rise to the grievance. After hearing or reviewing the grievance, the commission shall issue a written order either affirming or denying the grievance. Such order shall be delivered to the parties to the grievance or their counsel within seven

calendar days after the date of the hearing or the submission of the written grievance.

Source: Laws 1969, c. 140, § 14, p. 646; Laws 2003, LB 222, § 11.

This section does not become operative until a deputy sheriff has been reduced in either rank or grade or both by the sheriff; it does not become operative until the sheriff acts. The commissioner's authority, under this section, to modify the action of the sheriff does not permit him to increase the punishment imposed by the sheriff. Freese and Johnson v. County of Douglas, 210 Neb. 521, 315 N.W.2d 638 (1982).

23-1735 Classified service; discrimination; prohibited.

No person in the classified service or seeking admission thereto shall be appointed, reduced, or removed, or in any way favored or discriminated against because of his political, racial, or religious opinions or affiliations, except for membership in any organization which has advocated or does advocate the overthrow of the government of the United States or this state by force or violence.

Source: Laws 1969, c. 140, § 15, p. 647.

23-1736 Classified service; political activity; prohibited.

No person serving in the classified service under sections 23-1721 to 23-1736 shall actively participate in any campaign conducted by any candidate for public office while on duty or while in uniform.

Source: Laws 1969, c. 140, § 16, p. 647; Laws 2003, LB 222, § 12.

23-1737 Repealed. Laws 2003, LB 222, § 14.

ARTICLE 18

CORONER

Cross References

County attorney, ex officio coroner, see section 23-1210.
Execution, return by mail, when, see section 25-1548.
Eye tissue removal authorized, when, see section 71-4813.
Process, authority to serve, see section 25-2202.
Ticket quota requirements, prohibited, see section 48-235.

Section

Section
23-1821. Death during apprehension or custody; notice required; penalty.
23-1822. Death during apprehension or custody; county coroner; duties.
23-1823. Death during apprehension or custody; powers.
23-1824. Minor; autopsy required; when; guidelines; reimbursement.

23-1801 Inquest; when authorized; coroner's jury; compensation.

The coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means. When the coroner has notice of the presence in the county of the body of a person supposed to have died by unlawful means, the coroner may, at his or her discretion, issue a warrant to a sheriff of the county requiring the sheriff to summon six residents of the county to appear before the coroner at a time and place named in the warrant. Each juror shall receive for each day employed in the discharge of his or her duty the sum of twenty dollars to be paid by certificate drawn by the coroner on the general funds of the county.

Source: Laws 1879, § 97, p. 380; R.S.1913, § 5663; Laws 1915, c. 101, § 1, p. 244; C.S.1922, § 4993; Laws 1923, c. 109, § 1, p. 267; C.S.1929, § 26-1502; R.S.1943, § 23-1801; Laws 1979, LB 80, § 69; Laws 1987, LB 313, § 2; Laws 1988, LB 1030, § 7.

This article is incorporated into law which requires the county attorney to perform the duties of coroner. State ex rel. Crosby v. Moorhead, 100 Neb. 298, 159 N.W. 412 (1916).

Coroner has jurisdiction, though person may have been injured or died in another county. Moore v. Box Butte County, 78 Neb. 561, 111 N.W. 469 (1907).

Coroner can lawfully hold inquest upon bodies of persons supposed to have died by unlawful means. He is not entitled to fees unless a jury is summoned. Lancaster County v. Holyoke, 37 Neb. 328, 55 N.W. 950 (1893).

23-1802 Inquest; warrant; form.

The warrant may be in substance as follows: The State of Nebraska, ... County. To any sheriff of such county:

In the name of the people of the State of Nebraska, you are hereby required to summon six residents of your county to appear before me at ....., on the ..... day of ..... 20...., then and there to hold an inquest upon the dead body of ....., there lying, and by what means such person died. Witness my hand this ..... day of ..... A.D. 20.... . .....Coroner.

Source: Laws 1879, § 98, p. 381; R.S.1913, § 5664; C.S.1922, § 4994; C.S.1929, § 26-1503; R.S.1943, § 23-1802; Laws 1979, LB 80, § 70; Laws 1988, LB 1030, § 8; Laws 2004, LB 813, § 8.

Jurors must obey venire of coroner, and are entitled to fees though it was unnecessary to summon them. Moore v. Box Butte County, 78 Neb. 561, 111 N.W. 469 (1907).

23-1803 Inquest; warrant; execution.

The sheriff shall execute the warrant and make return thereof at the time and place therein named.

Source: Laws 1879, § 99, p. 381; R.S.1913, § 5665; C.S.1922, § 4995; C.S.1929, § 26-1504; R.S.1943, § 23-1803; Laws 1988, LB 1030, § 9.

23-1804 Inquest; coroner's jury; vacancies; oath.

If any juror fails to appear, the coroner shall cause the proper number to be summoned or returned from the bystanders immediately, and proceed to

impanel them and administer the following oath in substance: You do solemnly swear that you will diligently inquire and true presentment make, when, how, and by what means the person whose body lies here dead came to his or her death, according to your knowledge and the evidence given you, so help you God.

Source: Laws 1879, § 100, p. 381; R.S.1913, § 5666; C.S.1922, § 4996; C.S.1929, § 26-1505; R.S.1943, § 23-1804; Laws 1979, LB 80, § 71.

23-1805 Inquest; juror; refusal to serve; penalty.

Whoever, being so summoned as a juror, fails or refuses, without good cause, to attend at the time and place required, or, appearing, refuses to act as such juror, or misbehaves while acting as such juror, shall, on complaint of the coroner before the county court, be fined not less than three nor more than twenty dollars.

Source: Laws 1879, § 101, p. 381; R.S.1913, § 5667; C.S.1922, § 4997; C.S.1929, § 26-1506; R.S.1943, § 23-1805; Laws 1972, LB 1032, § 113.

23-1806 Inquest; subpoenas; power to issue.

The coroner may issue subpoenas within the county for witnesses, returnable forthwith, or at such time and place as the coroner shall therein direct.

Source: Laws 1879, § 102, p. 382; R.S.1913, § 5668; C.S.1922, § 4998; C.S.1929, § 26-1507; R.S.1943, § 23-1806; Laws 1979, LB 80, § 72.

Witness must obey subpoena, and can draw fees though inquest was unnecessary. Moore v. Box Butte County, 78 Neb. 561, 111 N.W. 469 (1907).

23-1807 Inquest; witnesses; oath.

An oath shall be administered to the witnesses in substance as follows: You do solemnly swear that the testimony which you shall give to this inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth, so help you God.

Source: Laws 1879, § 103, p. 382; R.S.1913, § 5669; C.S.1922, § 4999; C.S.1929, § 26-1508.

23-1808 Inquest; witnesses; recognizance for appearance in district court.

If the evidence of any witness shall implicate any person as the unlawful slayer of the person over whom the said inquisition shall be held, the coroner shall recognize such witness, in such sum as the coroner may think proper, to be and appear at the next term of the district court for the said county, there to give evidence of the matter in question and not depart without leave. Such recognizance shall be in the same form, as nearly as practicable, and have the same effect as recognizances taken in county court in cases of felony.

Source: Laws 1879, § 104, p. 382; R.S.1913, § 5670; C.S.1922, § 5000; C.S.1929, § 26-1509; R.S.1943, § 23-1808; Laws 1972, LB 1032, § 114; Laws 1979, LB 80, § 73.

23-1809 Inquest; verdict; form.

The jurors, having inspected the body, heard the testimony, and made all needful inquiries, shall return to the coroner their inquisition in writing, under their hands, in substance as follows, and stating the matter in the following form, as nearly as practicable:

State of Nebraska, ... County. At an inquisition held at ....., in .....County, on the .... day of ..... A.D. 20...., before me, ..., coroner of such county, upon the body of ....., lying dead, by the jurors whose names are hereto subscribed, the jurors upon their oath do say ..... (Here state when, how, or by what person, means, weapon, or accident the person came to his or her death, and whether feloniously). In testimony whereof the jurors have hereunto set their hands the day and year aforesaid. Attest: ....., Coroner.

Source: Laws 1879, § 105, p. 382; R.S.1913, § 5671; C.S.1922, § 5001; C.S.1929, § 26-1510; R.S.1943, § 23-1809; Laws 1979, LB 80, § 74; Laws 2004, LB 813, § 9.

23-1810 Inquest; verdict of murder or manslaughter; effect.

The verdict of the coroner's jury, charging any person with murder or manslaughter, shall have the same force and effect as the finding of a bill of indictment by the grand jury, until the case shall have been investigated by a grand jury, and they shall have made their return thereon.

Source: Laws 1879, § 115, p. 384; R.S.1913, § 5672; C.S.1922, § 5002; C.S.1929, § 26-1511.

23-1811 Inquest; arrest; when authorized.

If the person charged is present, the coroner may order his or her arrest by an officer or any other person present and shall then make a warrant requiring the officer or other person to take him or her before the county court for examination, or if the person charged is not present and the coroner believes the person can be taken, the coroner may issue a warrant to the sheriff requiring him or her to arrest the person and take the person charged before the county court for examination.

Source: Laws 1879, § 106, p. 383; R.S.1913, § 5673; C.S.1922, § 5003; C.S.1929, § 26-1512; R.S.1943, § 23-1811; Laws 1972, LB 1032, § 115; Laws 1979, LB 80, § 75; Laws 1988, LB 1030, § 10.

23-1812 Inquest; warrant of arrest; effect.

The warrant of a coroner in the above-stated cases shall be of equal authority with that of the county court; and when the person charged is brought before the court, the person charged shall be dealt with as a person held under a complaint in the usual form.

Source: Laws 1879, § 107, p. 383; R.S.1913, § 5674; C.S.1922, § 5004; C.S.1929, § 26-1513; R.S.1943, § 23-1812; Laws 1972, LB 1032, § 116; Laws 1979, LB 80, § 76.

23-1813 Inquest; warrant of arrest; contents.

The warrant of the coroner shall recite substantially the verdict of the jury of inquest, and such warrant shall be a sufficient foundation for the proceedings of the justice instead of a complaint.

Source: Laws 1879, § 108, p. 383; R.S.1913, § 5675; C.S.1922, § 5005; C.S.1929, § 26-1514.

23-1814 Inquest; return to district court; contents; duty.

The coroner shall return to the district court the inquisition, the papers connected with the same, and a list of the names of witnesses who testified in the matter.

Source: Laws 1879, § 109, p. 383; R.S.1913, § 5676; C.S.1922, § 5006; C.S.1929, § 26-1515.

23-1815 Inquest; personal property; discovery on or near body; disposition.

When any valuable personal property, money or papers are found upon or near the body upon which an inquest is held, the coroner shall take charge of the same and deliver the same to those entitled to its care or possession. If not claimed, or, if the same shall be necessary to defray expenses of the burial, the coroner shall, after giving ten days' notice of the time and place of sale, sell such property. After deducting funeral expenses, the coroner shall deposit the proceeds thereof, and the money and papers so found, with the county treasurer, taking receipt therefor, there to remain subject to the order of the legal representatives of the deceased, if claimed within five years thereafter, or if not claimed within that time, to vest in the school fund of the county.

Source: Laws 1879, § 110, p. 383; R.S.1913, § 5677; Laws 1915, c. 38, § 1, p. 109; C.S.1922, § 5007; C.S.1929, § 26-1516; R.S.1943, § 23-1815; Laws 1979, LB 80, § 77.

Where coroner was sued by administrator of deceased person for value of personal property of deceased sold by coroner, he could set off amount paid for necessary funeral expenses of deceased. Lenderink v. Sawyer, 92 Neb. 587, 138 N.W. 744 (1912), L.R.A. 1915D 948 (1912), Ann. Cas. 1914A 261 (1912).

23-1816 Inquest; body of deceased; disposition.

The coroner shall cause the body of each deceased person which the coroner is caused to view, to be delivered to the friends of the deceased, if there be any, but if there be none, the coroner shall cause the body to be decently buried and the expenses shall be paid from any property belonging to the deceased, or if there be none, from the county treasury, by warrant drawn thereon.

Source: Laws 1879, § 111, p. 384; R.S.1913, § 5678; C.S.1922, § 5008; C.S.1929, § 26-1517; R.S.1943, § 23-1816; Laws 1979, LB 80, § 78.

An undertaker who inters a dead body at request of coroner will be allowed compensation therefor, though inquest was unnecessary. Darling v. Box Butte County, 78 Neb. 564, 111 N.W. 470 (1907).

23-1817 Coroner; duties; performance by sheriff.

When there is no coroner, and in case of the coroner's absence or inability to act, the sheriff of the county is authorized to discharge the duties of coroner in relation to dead bodies.

Source: Laws 1879, § 112, p. 384; R.S.1913, § 5679; C.S.1922, § 5009; C.S.1929, § 26-1518; R.S.1943, § 23-1817; Laws 1979, LB 80, § 79.

23-1818 Inquest; surgeons; subpoena; when authorized.

If the coroner or jury deem it necessary, for the purposes of an inquisition, to summon any surgeons, the coroner shall issue a subpoena for those preferred, the same as for any other witness.

Source: Laws 1879, § 113, p. 384; R.S.1913, § 5680; C.S.1922, § 5010; C.S.1929, § 26-1519.

23-1819 Murder; warrant for arrest of suspect; when required.

The coroner is hereby authorized and required, on a request of a majority of the coroner's jury, to issue a warrant for any person suspected of having committed the crime of murder, and hold such person on said warrant until the inquest over the body is closed.

Source: Laws 1879, § 114, p. 384; R.S.1913, § 5681; C.S.1922, § 5011; C.S.1929, § 26-1520; R.S.1943, § 23-1819; Laws 1979, LB 80, § 80.

23-1820 Coroner's physician; appointment; when authorized; duties; compensation; mileage.

In each county there is hereby created the office of coroner's physician, who shall be appointed by the coroner of the county and be removable by the coroner, at a salary or schedule of fees or both to be set by the county board and to be paid by the county. Such physician shall certify the cause of death in every case of death in such county not certified by an attending physician and shall perform or cause to be performed an autopsy when requested by the coroner or as provided in section 23-1824. Such physician shall perform such other services in aid of the coroner as shall be requested by the coroner and shall be reimbursed for mileage at the rate provided in section 81-1176 for each mile actually and necessarily traveled by the most direct route while in the performance of such physician's duties.

Source: Laws 1907, c. 35, § 1, p. 169; R.S.1913, § 5682; C.S.1922, § 5012; Laws 1925, c. 97, § 1, p. 283; Laws 1929, c. 109, § 1, p. 403; C.S.1929, § 26-1521; Laws 1933, c. 96, § 5, p. 385; C.S.Supp.,1941, § 26-1521; R.S.1943, § 23-1820; Laws 1949, c. 44, § 1, p. 147; Laws 1963, c. 121, § 1, p. 467; Laws 1967, c. 125, § 3, p. 401; Laws 1979, LB 80, § 81; Laws 1981, LB 204, § 30; Laws 1996, LB 1011, § 13; Laws 1999, LB 46, § 2.

23-1821 Death during apprehension or custody; notice required; penalty.

(1) Every hospital, emergency care facility, physician, nurse, out-of-hospital emergency care provider, or law enforcement officer shall immediately notify the county coroner in all cases when it appears that an individual has died while being apprehended by or while in the custody of a law enforcement officer or detention personnel.

(2) Any person who violates this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1988, LB 676, § 1; Laws 1992, LB 1138, § 19; Laws 1997, LB 138, § 33.

23-1822 Death during apprehension or custody; county coroner; duties.

In each instance when the county coroner is given notice in accordance with section 23-1821, the coroner or coroner's physician shall perform an examination, a test, or an autopsy as he or she may deem necessary to establish, by a reasonable degree of medical certainty, the cause or causes of death and shall thereafter certify the cause or causes of death to the presiding judge of the district court.

Source: Laws 1988, LB 676, § 2.

23-1823 Death during apprehension or custody; powers.

In the performance of his or her duties under section 23-1822, the county coroner may, when applicable, invoke any or all of the provisions of sections 23-1815, 23-1816, and 23-1820.

Source: Laws 1988, LB 676, § 3.

23-1824 Minor; autopsy required; when; guidelines; reimbursement.

(1) The county coroner or coroner's physician shall perform, at county expense, an autopsy on any person less than nineteen years of age who dies a sudden death, except that no autopsy needs to be performed if (a) the death was caused by a readily recognizable disease or the death occurred due to trauma resulting from an accident and (b) the death did not occur under suspicious circumstances. The Attorney General shall create, by July 1, 2007, guidelines for county coroners or coroner's physicians regarding autopsies on persons less than nineteen years of age.

(2) The county coroner or coroner's physician shall attempt to establish, by a reasonable degree of medical certainty, the cause or causes of the death, and shall thereafter certify the cause or causes of death to the county attorney. No cause of death shall be certified as sudden infant death syndrome unless an autopsy, a death scene investigation, and a review of the child's medical history reveal no other possible cause.

(3) A county may request reimbursement of up to fifty percent of the cost of an autopsy from the Attorney General. Reimbursement requests may include, but not be limited to, costs for expert witnesses and complete autopsies, including toxicology screens and tissue sample tests. The Attorney General shall place an emphasis on autopsies of children five years of age and younger.

Source: Laws 1999, LB 46, § 1; Laws 2006, LB 1113, § 20.

ARTICLE 19

COUNTY SURVEYOR AND ENGINEER

Cross References

Constitutional provisions:
Election, when held, see Article XVII, section 4, Constitution of Nebraska.
Legislature, provide for election, see Article IX, section 4, Constitution of Nebraska.
Term begins, see Article XVII, section 5, Constitution of Nebraska.
Corners, government:
Destruction of, notify, see section 39-1708.
Protection, perpetuation, see Chapter 34, article 2, and section 39-1410.
Elected, when, see sections 32-525 and 32-526.
Fees, see section 33-116.
Field notes:
Evidence as, see section 25-1278.
State to file with, when, see sections 81-8,122 and 84-408.
Special, appointed when, see section 77-1306.01.
State surveyor, duties, see sections 84-407 to 84-414 and 86-507.
Vacancy:

How filled, see section 32-567.
Possession and control of office by deputy, see section 32-563.

Section

23-1901 County surveyor; county engineer; qualifications; powers and duties.

(1) It shall be the duty of the county surveyor to make or cause to be made all surveys within his or her county that the county surveyor may be called upon to make and record the same.

(2) In all counties having a population of at least fifty thousand inhabitants but less than one hundred fifty thousand inhabitants, the county surveyor shall be ex officio county engineer and shall be either a professional engineer as provided in the Engineers and Architects Regulation Act or a registered land surveyor as provided in sections 81-8,108 to 81-8,127 or both. In such counties, the office of surveyor shall be full time.

In counties having a population of one hundred fifty thousand inhabitants or more, a county engineer shall be a professional engineer as provided in the act and shall be elected as provided in section 32-526.

(3) The county engineer or ex officio county engineer shall:

(a) Prepare all plans, specifications, and detail drawings for the use of the county in advertising and letting all contracts for the building and repair of bridges, culverts, and all public improvements upon the roads;

(b) Make estimates of the cost of all such contemplated public improvements, make estimates of all material required for such public improvements, inspect the material and have the same measured and ascertained, and report to the county board whether the same is in accordance with its requirements;

(c) Superintend the construction of all such public improvements and inspect and require that the same shall be done according to contract;

(d) Make estimates of the cost of all labor and material which shall be necessary for the construction of all bridges and improvements upon public highways, inspect all of the work and materials placed in any such public improvements, and make a report in writing to the county board with a statement in regard to whether the same comply with the plans, specifications, and detail drawings of the county board prepared for such work or improvements and under which the contract was let; and

(e) Have charge and general supervision of work or improvements authorized by the county board, inspect all materials, direct the work, and make a report of each piece of work to the county board.

The county engineer or surveyor shall also have such other and further powers as are necessarily incident to the general powers granted.

(4) The county surveyor shall prepare and file the required annual inventory statement of county personal property in his or her custody or possession as provided in sections 23-346 to 23-350.

(5) In counties having a population of one hundred fifty thousand inhabitants or more, the county engineer shall appoint a full-time county surveyor. The county surveyor shall perform all the duties prescribed in sections 23-1901 to 23-1913 and any other duties assigned to him or her by the county engineer. The county surveyor shall be a registered land surveyor as provided in sections 81-8,108 to 81-8,127.

Source: Laws 1879, § 127, p. 386; Laws 1905, c. 50, § 1, p. 295; R.S.1913, § 5685; Laws 1921, c. 141, § 1, p. 606; C.S.1922, § 5015; C.S.1929, § 26-1601; Laws 1939, c. 28, § 16, p. 154; C.S.Supp.,1941, § 26-1601; R.S.1943, § 23-1901; Laws 1969, c. 170, § 1, p. 747; Laws 1982, LB 127, § 2; Laws 1986, LB 512, § 1; Laws 1990, LB 821, § 14; Laws 1994, LB 76, § 543; Laws 1997, LB 622, § 58.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

23-1901.01 County surveyor; residency; employed from another county; when; term.

(1) Except as provided in subsection (2) of this section, a county surveyor elected after November 1986 need not be a resident of the county when he or she files for election as county surveyor, but a county surveyor shall reside in a county for which he or she holds office.

(2) When there is no qualified surveyor within a county who will accept the office of county surveyor, the county board of such county may employ a competent surveyor either on a full-time or part-time basis from any other county of the State of Nebraska to such office. In making such employment, the county board shall negotiate a contract with the surveyor, such contract to specify the terms and conditions of the appointment or employment, including the compensation of the surveyor, which compensation shall not be subject to section 33-116. A surveyor employed under this subsection shall serve the same term as that of an elected surveyor and shall not be required to reside in the county of employment.

Source: Laws 1951, c. 45, § 1, p. 162; Laws 1979, LB 115, § 1; Laws 1982, LB 127, § 3; Laws 1986, LB 812, § 7; Laws 1996, LB 1085, § 35.

23-1901.02 County surveyor; deputy; appointment; oath; duties.

The county surveyor may appoint a deputy for whose acts he or she will be responsible. The surveyor may not appoint the county treasurer, sheriff, register of deeds, or clerk as deputy.

In counties having a population of fifty thousand but less than one hundred fifty thousand, if the county surveyor is a professional engineer, he or she shall appoint as deputy a registered land surveyor or, if the county surveyor is a registered land surveyor, he or she shall appoint as deputy a professional

engineer. This requirement shall not apply if the county surveyor is both a professional engineer and a registered land surveyor.

The appointment shall be in writing and revocable in writing by the surveyor. Both the appointment and revocation shall be filed and kept in the office of the county clerk.

The deputy shall take the same oath as the surveyor which shall be endorsed upon and filed with the certificate of appointment. The surveyor may require a bond of the deputy.

In the absence or disability of the surveyor, the deputy shall perform the duties of the surveyor pertaining to the office, but when the surveyor is required to act in conjunction with or in place of another officer, the deputy cannot act in the surveyor's place.

Source: Laws 1990, LB 821, § 15.

23-1902 Repealed. Laws 1982, LB 127, § 19.

23-1903 Witnesses; attendance and testimony; power to compel; fees.

The county surveyor or his deputy, in the performance of his official duties, shall have the power to summon and compel the attendance of witnesses before him, to testify respecting the location and identification of any line or corner. When any such witness testifies to any material fact, his testimony must be reduced to writing and subscribed by him and made a matter of record. The county surveyor and his deputy are hereby authorized and empowered to administer oaths and affirmations to any person appearing as a witness before them. But the testimony as provided for herein shall never be used as evidence in any action involving corners or boundary lines, except for the purpose of impeachment. Each witness shall be entitled to the same fees allowed in county court.

Source: Laws 1913, c. 43, § 1, p. 142; R.S.1913, § 5687; Laws 1921, c. 138, § 1, p. 604; C.S.1922, § 5017; C.S.1929, § 26-1603; R.S. 1943, § 23-1903; Laws 1972, LB 1032, § 117.

23-1904 Surveyor's certificate; use as evidence; effect.

The certificate of the county surveyor of any survey made by him of any lands in the county shall be presumptive evidence of the facts stated therein, unless such surveyor shall be interested in the same.

Source: Laws 1913, c. 43, § 2, p. 142; R.S.1913, § 5688; C.S.1922, § 5018; C.S.1929, § 26-1604.

23-1905 Surveyor; interest; disqualification; who may act.

Whenever a survey of any lands or lots is required, in which the county surveyor is interested, such survey may be made by the surveyor of another county in like manner and to the same effect as though such survey had been made by the surveyor of the county where the land is situated. The surveyor doing the work shall record the field notes of said survey in the official record of surveys of the county wherein the land is situated.

Source: Laws 1913, c. 43, § 3, p. 142; R.S.1913, § 5689; C.S.1922, § 5019; C.S.1929, § 26-1605.

23-1906 Trespass; exemption from liability.

The county surveyor in the performance of his official duties, shall not be liable to prosecution for trespass.

Source: Laws 1913, c. 43, § 4, p. 143; R.S.1913, § 5690; C.S.1922, § 5020; C.S.1929, § 26-1606.

County surveyor, when in performance of his official duties, is not liable to prosecution for trespass. Kissinger v. State, 123 Neb. 856, 244 N.W. 794 (1932).

23-1907 Original corners; perpetuation.

It shall be the duty of the county surveyor in surveys made by him or her to perpetuate all original corners not at the time well marked, and all corners or angles that he or she may establish or reestablish, in a permanent manner by setting monuments containing ferromagnetic material, according to the instructions of the State Surveyor.

Source: Laws 1913, c. 43, § 5, p. 143; R.S.1913, § 5691; C.S.1922, § 5021; C.S.1929, § 26-1607; R.S.1943, § 23-1907; Laws 1982, LB 127, § 4.

23-1908 Corners; establishment and restoration; rules governing.

The boundaries of the public lands established by the duly appointed government surveyors, when approved by the Surveyor General and accepted by the government, are unchangeable, and the corners established thereon by them shall be held and considered as the true corners which they were intended to represent, and the restoration of lines and corners of said surveys and the division of sections into their legal subdivisions shall be in accordance with the laws of the United States, the circular of instructions of the United States Department of the Interior, Bureau of Land Management, on the restoration of lost and obliterated section corners and quarter corners, and the circular of instructions to the county surveyors by the State Surveyor under authority of the Board of Educational Lands and Funds. The county surveyor is hereby authorized to restore lost and obliterated corners of original surveys and to establish the subdivisional corners of sections in accordance with the provisions of this section and section 23-1907. Any registered land surveyor registered under the provisions of sections 81-8,108 to 81-8,127 is hereby authorized to establish any corner not monumented in the original government surveys in accordance with the provisions of this section and section 23-1907. Subdivision shall be executed according to the plan indicated by the original field notes and plats of surveys and governed by the original and legally restored corners. The survey of the subdivisional lines of sections in violation of this section shall be absolutely void.

Source: Laws 1913, c. 43, § 6, p. 143; R.S.1913, § 5692; Laws 1915, c. 102, § 1, p. 245; Laws 1917, c. 109, § 1, p. 280; Laws 1921, c. 161, § 1, p. 654; C.S.1922, § 5022; C.S.1929, § 26-1608; R.S. 1943, § 23-1908; Laws 1969, c. 171, § 1, p. 748; Laws 1982, LB 127, § 5.

This section provides that the restoration of lines and corners of original government surveys shall be in accordance with the laws of the United States and the circular of instructions of the U.S. Department of the Interior, Bureau of Land Management. The circular of instructions of the U.S. Department of the Interior provides that in restoring lines of a survey the purpose is not to correct the original survey, but to determine where the corner was established in the beginning; that an existent corner is one whose position can be located by an acceptable survey record, including testimony of witnesses who have a dependable

knowledge of the original location; and that an obliterated corner's location may be recovered if proved beyond a reasonable doubt by unquestionable testimony. State v. Jarchow, 219 Neb. 88, 362 N.W.2d 19 (1985).

Government monuments, if found, will control as to location of section corners and subsequent surveys. Runkle v. Welty, 86 Neb. 680, 126 N.W. 139 (1910).

Government monuments or corners will control course and distance and government plats and field notes are competent evidence. Peterson v. Skjelver, 43 Neb. 663, 62 N.W. 43 (1895).

23-1909 Subdivisions; petition for survey; expense.

Whenever a majority of the owners of any section or quarter section of land, which has not been subdivided into its legal subdivisions, or owners of a major portion thereof, desire to have said land subdivided, they may petition the county surveyor to make such survey, who, after giving at least ten days' notice to all such owners residing within the county, shall proceed to make the survey. The expense thereof shall be borne by all the owners in proportion to the work done for each, to be apportioned by the surveyor.

Source: Laws 1913, c. 43, § 7, p. 144; R.S.1913, § 5693; C.S.1922, § 5023; C.S.1929, § 26-1609.

23-1910 Field books; contents.

Each county surveyor shall procure, at the expense of the county, suitable memorandum field books for his or her use in the field. He or she shall enter in such field books, as the work progresses, all the details necessary to make up a complete record of each survey. The field books are to be properly indexed and kept on file as a part of the records of his or her office.

Source: Laws 1913, c. 43, § 8, p. 144; R.S.1913, § 5694; C.S.1922, § 5024; C.S.1929, § 26-1910; R.S.1943, § 23-1910; Laws 1982, LB 127, § 6.

23-1911 Surveys; records; contents; available to public.

The county surveyor shall record all surveys, for permanent purposes, made by him or her, as required by sections 81-8,121 to 81-8,122.02. Such record shall set forth the names of the persons making the application for the survey, for whom the work was done, and a statement showing it to be an official county survey or resurvey. The official records, other plats, and field notes of the county surveyor's office shall be deemed and considered public records. Any agent or authority of the United States, the State Surveyor or any deputy state surveyor of Nebraska, or any surveyor registered pursuant to sections 81-8,108 to 81-8,127, shall at all times, within reasonable office or business hours, have free access to the surveys, field notes, maps, charts, records, and other papers as provided for in sections 23-1901 to 23-1913. In all counties, where no regular office is maintained in the county courthouse for the county surveyor of that county, the county clerk shall be custodian of the official record of surveys and all other permanent records pertaining to the office of county surveyor.

Source: Laws 1913, c. 43, § 9, p. 144; R.S.1913, § 5695; C.S.1922; § 5025; C.S.1929, § 26-1611; Laws 1941, c. 44, § 1, p. 227; C.S.Supp.,1941, § 26-1611; R.S.1943, § 23-1911; Laws 1982, LB 127, § 7.

An agreement as to boundary line is binding upon all parties having notice, though it may not be true line. Lynch v. Egan, 67 Neb. 541, 93 N.W. 775 (1903); Egan v. Light, 4 Neb. Unof. 127, 93 N.W. 859 (1903).

Where, on a line of the same survey and between remote corners, there is a variance between the measurement of the length of the whole line and the length of the line called for, excess or deficiency should be distributed equally unless one of the quarter sections is fractional, in which latter case excess is distributed proportionately. Brooks v. Stanley, 66 Neb. 826, 92 N.W. 1013 (1902).

In determining lines, testimony of party who located the line from government monuments then in existence is preferable to surveyor's testimony, who subsequently located a different line. Baty v. Elrod, 66 Neb. 735, 92 N.W. 1032 (1903), affirmed on rehearing 66 Neb. 744, 97 N.W. 343 (1903).

Government corners, if ascertained, will control all other surveys; if lost, they may be established by witnesses; if no witnesses, government field notes will control. Clark v. Thornburg, 66 Neb. 717, 92 N.W. 1056 (1902).

Government corners control field notes at time of survey and also field notes, courses, and distances of subsequent survey; as to lost corners, field notes will control. Knoll v. Randolph, 3 Neb. Unof. 599, 92 N.W. 195 (1902).

Surveyor need not follow original order of survey and his location of section corner will not be rejected in absence of proof of mistake or error. Shrake v. Laflin, 3 Neb. Unof. 489, 92 N.W. 184 (1902).

23-1912 Repealed. Laws 1982, LB 127, § 19.

23-1913 Records; transfer to successor; violation; penalty.

When the term of any county surveyor shall expire or he shall resign or be removed, he shall deliver to his successor all books, maps, plats, diagrams, and papers pertaining to his office, and all correspondence with the Department of the Interior at Washington, D.C., and state officials pertaining to surveys in his county. Any county surveyor who, on the expiration of his term of office, or on his resignation or removal, shall neglect, for the period of thirty days after his successor shall be elected or appointed, and qualified, to deliver all such books, maps, plats, diagrams, papers, and correspondence aforesaid, or any executor or administrator of any deceased county surveyor, who shall neglect for the space of thirty days to deliver to such successor all such books, maps, plats, diagrams, papers, and correspondence aforesaid, which shall come into his hands, shall forfeit and pay into the county treasury a sum not less than ten and not more than fifty dollars, and a similar sum for each thirty days thereafter during which he shall so neglect to deliver the same as aforesaid. If no successor has been elected or appointed and qualified, then they shall be delivered to the county clerk.

Source: Laws 1913, c. 43, § 11, p. 146; R.S.1913, § 5697; C.S.1922, § 5027; C.S.1929, § 26-1613.

ARTICLE 20

REMOVAL OF COUNTY OFFICERS

Cross References

Recall provisions, see Chapter 32, article 13.

(a) REMOVAL BY JUDICIAL PROCEEDINGS

Section
23-2001. County officers; removal by judicial proceedings; grounds.
23-2002. County officers; removal by judicial proceedings; jurisdiction of district court.
23-2003. County officers; removal by judicial proceedings; procedure.
23-2004. County officers; removal by judicial proceedings; complaint; verification.
23-2005. County officers; removal by judicial proceedings; complaint; summons and service.
23-2006. County officers; removal by judicial proceedings; defensive pleadings.
23-2007. County officers; removal by judicial proceedings; judgment.
23-2008. County officers; removal by judicial proceedings; costs of action.
23-2009. County officers; suspension pending trial; vacancy; how filled.

(b) REMOVAL BY RECALL

23-2010. Repealed. Laws 1984, LB 975, § 14.
23-2010.01. Repealed. Laws 1984, LB 975, § 14.
23-2010.02. Repealed. Laws 1984, LB 975, § 14.

(a) REMOVAL BY JUDICIAL PROCEEDINGS

23-2001 County officers; removal by judicial proceedings; grounds.

All county officers may be charged, tried, and removed from office, in the manner hereinafter provided, for (1) habitual or willful neglect of duty, (2) extortion, (3) corruption, (4) willful maladministration in office, (5) conviction of a felony, (6) habitual drunkenness, or (7) official misconduct as defined in section 28-924.

Source: R.S.1866, c. 45, § 1, p. 297; R.S.1913, § 5698; C.S.1922, § 5028; C.S.1929, § 26-1701; Laws 1937, c. 55, § 1, p. 222; C.S.Supp.,1941, § 26-1701; R.S.1943, § 23-2001; Laws 1972, LB 1032, § 118; Laws 1985, LB 423, § 2.

Failure by a county attorney to reside in the county he or she holds office is not official misconduct. Hynes v. Hogan, 251 Neb. 404, 558 N.W.2d 35 (1997).

A constitutional officer may only be removed by impeachment as provided in Constitution of Nebraska, and the Legislature may not provide for suspension or removal of such officer. Laverty v. Cochran, 132 Neb. 118, 271 N.W. 354 (1936).

If, pending appeal, the term of defendant expires, appeal will be dismissed. McCarter v. Lavery, 101 Neb. 748, 164 N.W. 1054 (1917).

Actions hereunder are penal in nature and to justify removal under first and sixth subdivisions, it must be shown that acts were performed with evil intent or legal malice. Hiatt v. Tomlinson, 100 Neb. 51, 158 N.W. 383 (1916).

The only method of removing county judge from office is by impeachment, as provided in section 14, Article III, Constitution of Nebraska. Conroy v. Hallowell, 94 Neb. 794, 144 N.W. 895 (1913).

Where county treasurer is reelected, failure of county board to remove him from office for failure to account for funds does not preclude suit on bond. Thomssen v. Hall County, 63 Neb. 777, 89 N.W. 389 (1902), 57 L.R.A. 303 (1902).

23-2002 County officers; removal by judicial proceedings; jurisdiction of district court.

Any person may make such charge, and the district court shall have exclusive original jurisdiction thereof by summons.

Source: R.S.1866, c. 45, § 2, p. 298; Laws 1905, c. 51, § 1, p. 297; R.S.1913, § 5699; C.S.1922, § 5029; C.S.1929, § 26-1702.

23-2003 County officers; removal by judicial proceedings; procedure.

The proceedings shall be as nearly like those in other actions as the nature of the case admits, excepting where otherwise provided in sections 23-2001 to 23-2009.

Source: R.S.1866, c. 45, § 3, p. 298; R.S.1913, § 5700; C.S.1922, § 5030; C.S.1929, § 26-1703.

23-2004 County officers; removal by judicial proceedings; complaint; verification.

The complaint shall be by an accuser against the accused, and shall contain the charges with the necessary specifications under them, and be verified by the affidavit of any elector of the state that he believes the charges to be true.

Source: R.S.1866, c. 45, § 4, p. 298; R.S.1913, § 5701; C.S.1922, § 5031; C.S.1929, § 26-1704.

Complaint set out and held sufficient. Stewart v. Bole, 61 Neb. 193, 85 N.W. 33 (1901).

23-2005 County officers; removal by judicial proceedings; complaint; summons and service.

It will be sufficient that the summons require the accused to appear and answer to the complaint of ..... (naming the accuser) for official misdemeanor, but a copy of the complaint must be served with the summons.

Source: R.S.1866, c. 45, § 5, p. 298; R.S.1913, § 5702; C.S.1922, § 5032; C.S.1929, § 26-1705.

23-2006 County officers; removal by judicial proceedings; defensive pleadings.

No answer or other pleading after the complaint is necessary, but the defendant may move to reject the complaint upon any ground rendering such motion proper; and he may answer if he desires, and if he answers the accuser may reply or not. But if there be an answer and reply, the provisions of section 23-2003 relating to pleadings in the action shall apply.

Source: R.S.1866, c. 45, § 6, p. 298; R.S.1913, § 5703; C.S.1922, § 5033; C.S.1929, § 26-1706.

23-2007 County officers; removal by judicial proceedings; judgment.

The question of fact shall be tried as in other actions, and if the accused is found guilty, judgment shall be entered removing the officer from his office, and declaring the latter vacant, and the clerk shall enter a copy of the judgment in the election book.

Source: R.S.1866, c. 45, § 7, p. 298; R.S.1913, § 5704; C.S.1922, § 5034; C.S.1929, § 26-1707.

23-2008 County officers; removal by judicial proceedings; costs of action.

The accuser and the accused are liable to costs as in other actions.

Source: R.S.1866, c. 45, § 8, p. 298; R.S.1913, § 5705; C.S.1922, § 5035; C.S.1929, § 26-1708.

23-2009 County officers; suspension pending trial; vacancy; how filled.

When the accused is an officer of the court, and is suspended, the court may supply his place by appointment for the term.

Source: R.S.1866, c. 45, § 9, p. 298; R.S.1913, § 5706; C.S.1922, § 5036; C.S.1929, § 26-1709.

''Suspended'', as used in this section, is not synonymous with ''removed'', as used in first section of article. State ex rel. Dodson v. Meeker, 19 Neb. 444, 27 N.W. 427 (1886).

(b) REMOVAL BY RECALL

23-2010 Repealed. Laws 1984, LB 975, § 14.

23-2010.01 Repealed. Laws 1984, LB 975, § 14.

23-2010.02 Repealed. Laws 1984, LB 975, § 14.

23-2010.03 Repealed. Laws 1984, LB 975, § 14.

23-2010.04 Repealed. Laws 1984, LB 975, § 14.

23-2010.05 Repealed. Laws 1984, LB 975, § 14.

23-2010.06 Repealed. Laws 1984, LB 975, § 14.

23-2010.07 Repealed. Laws 1984, LB 975, § 14.

23-2010.08 Repealed. Laws 1984, LB 975, § 14.

23-2010.09 Repealed. Laws 1984, LB 975, § 14.

23-2010.10 Repealed. Laws 1984, LB 975, § 14.

23-2011 Repealed. Laws 1980, LB 601, § 13.

(c) REMOVAL OF DISABLED OFFICERS

23-2012 Removal of disabled officers; procedure.

Whenever the county board shall determine after hearing that any county officer or deputy is physically or mentally incapable of performing the duties of his office and cannot recover sufficiently to be able to perform such duties, the board shall declare such position vacant and appoint a successor. The county board shall appoint two physicians to examine the officer or deputy and shall receive the report of the physicians as evidence at the hearing. If the person so removed is an officer, the appointment shall be for the unexpired portion of the term. Such hearing shall be held only after ten days' notice in writing to the officer or deputy concerned. An appeal to district court may be taken from the action in the same manner as appeals are now taken from the action of the county board in the allowance or disallowance of claims against the county. The provisions of this section shall not apply to the office of county judge.

Source: Laws 1967, c. 110, § 1, p. 358.

(d) TEMPORARY REMOVAL

23-2013 Incarcerated county officer; forfeiture of office; replacement.

Except as provided in section 23-2001, the county board may require a county officer incarcerated for the conviction of a crime to temporarily forfeit his or her powers and duties while so incarcerated. The county board may declare the office temporarily vacant and appoint a replacement for the period of time such officer is incarcerated. The temporary officer shall assume all the

powers and duties of the office and be compensated accordingly. No compensation shall be given to the incarcerated officer. If no other action is taken, the county officer may resume all duties of his or her office after the completion of his or her period of incarceration.

Source: Laws 1985, LB 423, § 1.

The Legislature's provisions of denying compensation when an official is incarcerated do not show an intent to provide compensation in all other instances. Hogan v. Garden County, 268 Neb. 631, 686 N.W.2d 356 (2004).

This section is silent about compensation. Hogan v. Garden County, 268 Neb. 631, 686 N.W.2d 356 (2004).

ARTICLE 21

EMERGENCY SEAT OF LOCAL GOVERNMENT

Section
23-2101. Transferred to section 13-701.
23-2102. Transferred to section 13-702.
23-2103. Transferred to section 13-703.
23-2104. Transferred to section 13-704.
23-2105. Transferred to section 13-705.
23-2106. Transferred to section 13-706.
23-2107. Repealed. Laws 1963, c. 340, § 1.

23-2101 Transferred to section 13-701.

23-2102 Transferred to section 13-702.

23-2103 Transferred to section 13-703.

23-2104 Transferred to section 13-704.

23-2105 Transferred to section 13-705.

23-2106 Transferred to section 13-706.

23-2107 Repealed. Laws 1963, c. 340, § 1.

ARTICLE 22

INTERLOCAL COOPERATION ACT

Section
23-2201. Transferred to section 13-802.
23-2202. Transferred to section 13-801.
23-2203. Transferred to section 13-803.
23-2204. Transferred to section 13-804.
23-2205. Transferred to section 13-805.
23-2206. Transferred to section 13-806.
23-2207. Transferred to section 13-807.

23-2201 Transferred to section 13-802.

23-2202 Transferred to section 13-801.

23-2203 Transferred to section 13-803.

23-2204 Transferred to section 13-804.

23-2205 Transferred to section 13-805.

23-2206 Transferred to section 13-806.

23-2207 Transferred to section 13-807.

ARTICLE 23
COUNTY EMPLOYEES RETIREMENT

Cross References

County with one hundred fifty thousand inhabitants or more, provisions applicable if retirement system not adopted, see section 23-1118.

Section

23-2301 Terms, defined.

For purposes of the County Employees Retirement Act, unless the context otherwise requires:

(1) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of an annuity payment. The mortality assumption used for purposes of converting the member cash balance account shall be the 1994 Group Annuity Mortality Table using a unisex rate that is fifty percent male and fifty percent female. For purposes of converting the member cash balance account attributable to contributions made prior to January 1, 1984, that were transferred pursuant to the act, the 1994 Group Annuity Mortality Table for males shall be used;

(2) Annuity means equal monthly payments provided by the retirement system to a member or beneficiary under forms determined by the board beginning the first day of the month after an annuity election is received in the office of the Nebraska Public Employees Retirement Systems or the first day of the month after the employee's termination of employment, whichever is later. The last payment shall be at the end of the calendar month in which the member dies or in accordance with the payment option chosen by the member;

(3) Annuity start date means the date upon which a member's annuity is first effective and shall be the first day of the month following the member's

termination or following the date the application is received by the board, whichever is later;

(4) Cash balance benefit means a member's retirement benefit that is equal to an amount based on annual employee contribution credits plus interest credits and, if vested, employer contribution credits plus interest credits and dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317;

(5)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(6) Date of adoption of the retirement system by each county means the first day of the month next following the date of approval of the retirement system by the county board or January 1, 1987, whichever is earlier;

(7) Date of disability means the date on which a member is determined by the board to be disabled;

(8) Defined contribution benefit means a member's retirement benefit from a money purchase plan in which member benefits equal annual contributions and earnings pursuant to section 23-2309 and, if vested, employer contributions and earnings pursuant to section 23-2310;

(9) Disability means an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or be of a long and indefinite duration;

(10) Employee means all persons or officers who are employed by a county of the State of Nebraska on a permanent basis, persons or officers employed by or serving in a municipal county formed by at least one county participating in the retirement system, persons employed as provided in section 2-1608, all elected officers of a county, and such other persons or officers as are classified from time to time as permanent employees by the county board of the county by which they are employed, except that employee does not include judges, employees or officers of any county having a population in excess of one hundred fifty thousand inhabitants, or, except as provided in section 23-2306, persons making contributions to the School Retirement System of the State of Nebraska;

(11) Employee contribution credit means an amount equal to the member contribution amount required by section 23-2307;

(12) Employer contribution credit means an amount equal to the employer contribution amount required by section 23-2308;

(13) Final account value means the value of a member's account on the date the account is either distributed to the member or used to purchase an annuity from the plan, which date shall occur as soon as administratively practicable after receipt of a valid application for benefits, but no sooner than forty-five days after the member's termination;

(14) Five-year break in service means a period of five consecutive one-year breaks in service;

(15) Full-time employee means an employee who is employed to work one-half or more of the regularly scheduled hours during each pay period;

(16) Future service means service following the date of adoption of the retirement system;

(17) Guaranteed investment contract means an investment contract or account offering a return of principal invested plus interest at a specified rate. For investments made after July 19, 1996, guaranteed investment contract does not include direct obligations of the United States or its instrumentalities, bonds, participation certificates or other obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or collateralized mortgage obligations and other derivative securities. This subdivision shall not be construed to require the liquidation of investment contracts or accounts entered into prior to July 19, 1996;

(18) Interest credit rate means the greater of (a) five percent or (b) the applicable federal mid-term rate, as published by the Internal Revenue Service as of the first day of the calendar quarter for which interest credits are credited, plus one and one-half percent, such rate to be compounded annually;

(19) Interest credits means the amounts credited to the employee cash balance account and the employer cash balance account at the end of each day. Such interest credit for each account shall be determined by applying the daily portion of the interest credit rate to the account balance at the end of the previous day. Such interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account after a member ceases to be an employee, except that no such credit shall be made with respect to the employee cash balance account and the employer cash balance account for any day beginning on or after the member's date of final account value. If benefits payable to the member's surviving spouse or beneficiary are delayed after the member's death, interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account until such surviving spouse or beneficiary commences receipt of a distribution from the plan;

(20) Member cash balance account means an account equal to the sum of the employee cash balance account and, if vested, the employer cash balance account and dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317;

(21) One-year break in service means a plan year during which the member has not completed more than five hundred hours of service;

(22) Participation means qualifying for and making the required deposits to the retirement system during the course of a plan year;

(23) Part-time employee means an employee who is employed to work less than one-half of the regularly scheduled hours during each pay period;

(24) Plan year means the twelve-month period beginning on January 1 and ending on December 31;

(25) Prior service means service prior to the date of adoption of the retirement system;

(26) Regular interest means the rate of interest earned each calendar year as determined by the retirement board in conformity with actual and expected earnings on the investments through December 31, 1985;

(27) Required contribution means the deduction to be made from the compensation of employees as provided in the act;

(28) Retirement means qualifying for and accepting the retirement benefit granted under the act after terminating employment;

(29) Retirement board or board means the Public Employees Retirement Board;

(30) Retirement system means the Retirement System for Nebraska Counties;

(31) Service means the actual total length of employment as an employee and is not deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under section 23-2315;

(32) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits;

(33) Termination of employment occurs on the date on which a county which is a member of the retirement system determines that its employer-employee relationship with an employee is dissolved. The county shall notify the board of the date on which such a termination has occurred. Termination of employment does not occur if an employee whose employer-employee relationship with a county is dissolved enters into an employer-employee relationship with the same or another county which participates in the Retirement System for Nebraska Counties and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased with the county and the date when the employer-employee relationship commenced with the same or another county which qualifies the employee for participation in the plan. It shall be the responsibility of the current employer to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a termination benefit has been paid to a

member of the retirement system pursuant to section 23-2319, the board shall require the member who has received such benefit to repay the benefit to the retirement system; and

(34) Vesting credit means credit for years, or a fraction of a year, of participation in another Nebraska governmental plan for purposes of determining vesting of the employer account.

Source: Laws 1965, c. 94, § 1, p. 402; Laws 1969, c. 172, § 1, p. 750; Laws 1973, LB 216, § 1; Laws 1974, LB 905, § 1; Laws 1975, LB 47, § 1; Laws 1975, LB 45, § 1; Laws 1984, LB 216, § 2; Laws 1985, LB 347, § 1; Laws 1985, LB 432, § 1; Laws 1986, LB 311, § 2; Laws 1991, LB 549, § 1; Laws 1993, LB 417, § 1; Laws 1994, LB 833, § 1; Laws 1995, LB 369, § 2; Laws 1996, LB 847, § 2; Laws 1996, LB 1076, § 1; Laws 1996, LB 1273, § 14; Laws 1997, LB 624, § 1; Laws 1998, LB 1191, § 23; Laws 1999, LB 703, § 1; Laws 2000, LB 1192, § 1; Laws 2001, LB 142, § 32; Laws 2002, LB 407, § 1; Laws 2002, LB 687, § 3; Laws 2003, LB 451, § 2; Laws 2004, LB 1097, § 2; Laws 2006, LB 366, § 2; Laws 2006, LB 1019, § 1.

Cross References

Spousal Pension Rights Act, see section 42-1101.

23-2302 Retirement System for Nebraska Counties; establish; purpose; acceptance of contributions.

(1) A county employees retirement system shall be established for the purpose of providing a retirement annuity or other benefits for employees as provided by the County Employees Retirement Act. It shall be known as the Retirement System for Nebraska Counties, and by such name shall transact all business and hold all cash and other property as provided in the County Employees Retirement Act.

(2) The retirement system shall not accept as contributions any money from members or participating counties except the following:

(a) Mandatory contributions established by sections 23-2307 and 23-2308;

(b) Payments on behalf of transferred employees made pursuant to section 23-2306.02 or 23-2306.03;

(c) Money that is a repayment of refunded contributions made pursuant to section 23-2320;

(d) Contributions for military service credit made pursuant to section 23-2323.01;

(e) Actuarially required contributions pursuant to subdivision (4)(b) of section 23-2317;

(f) Trustee-to-trustee transfers pursuant to section 23-2323.04; or

(g) Corrections ordered by the board pursuant to section 23-2305.01.

Source: Laws 1965, c. 94, § 2, p. 403; Laws 1985, LB 347, § 2; Laws 1985, LB 432, § 2; Laws 2003, LB 451, § 3.

23-2303 Repealed. Laws 1973, LB 216, § 4.

23-2304 Repealed. Laws 1973, LB 216, § 4.

23-2305 Public Employees Retirement Board; duties; rules and regulations.

It shall be the duty of the board to administer the County Employees Retirement Act as provided in section 84-1503. The board shall adopt and promulgate rules and regulations to carry out the act.

Source: Laws 1965, c. 94, § 5, p. 404; Laws 1969, c. 172, § 2, p. 752; Laws 1979, LB 416, § 1; Laws 1985, LB 347, § 3; Laws 1991, LB 549, § 2; Laws 1995, LB 369, § 3; Laws 1996, LB 847, § 3.

23-2305.01 Board; power to adjust contributions and benefits.

(1) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the statutory provisions of the County Employees Retirement Act, the board shall refund contributions, require additional contributions, adjust benefits, credit dividend amounts, or require repayment of benefits paid. In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the prior overpayment, together with regular interest or interest credits, whichever is appropriate, thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest or interest credits, whichever is appropriate.

(2) The board shall adopt and promulgate rules and regulations implementing this section, which shall include, but not be limited to, the following: (a) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (b) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment of contributions or benefits; and (c) notice provided to all affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

Source: Laws 1996, LB 1076, § 5; Laws 2002, LB 687, § 4; Laws 2006, LB 1019, § 2.

23-2306 Retirement system; members; employees; elected officials; new employee; participation in another governmental plan; how treated; separate employment; effect.

(1) The membership of the retirement system shall be composed of all persons who are or were employed by member counties and who maintain an account balance with the retirement system.

(2) The following employees of member counties are authorized to participate in the retirement system: (a) All permanent full-time employees shall begin participation in the retirement system upon employment and full-time elected officials shall begin participation in the retirement system upon taking office, (b) all permanent part-time employees who have attained the age of twenty years may exercise the option to begin participation in the retirement system, and (c) all part-time elected officials may exercise the option to begin participation in the retirement system. An employee who exercises the option to begin participation in the retirement system shall remain in the system until termination or retirement, regardless of any change of status as a permanent or temporary employee.

(3) Within the first thirty days of employment, a full-time employee may apply to the board for vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned. The board may adopt and promulgate rules and regulations governing the assessment and granting of vesting credit.

(4) Any employee who qualifies for membership in the retirement system pursuant to this section may not be disqualified from membership in the retirement system solely because such employee also maintains separate employment which qualifies the employee for membership in another public retirement system, nor may membership in this retirement system disqualify such an employee from membership in another public retirement system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

(5) A full-time or part-time employee of a city, village, or township who becomes a county employee pursuant to a merger of services shall receive vesting credit for his or her years of participation in a Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code, of the city, village, or township.

(6) A full-time or part-time employee of a city, village, fire protection district, or township who becomes a municipal county employee shall receive credit for his or her years of employment with the city, village, fire protection district, or township for purposes of the vesting provisions of this section.

(7) Counties shall ensure that employees authorized to participate in the retirement system pursuant to this section shall enroll and make required contributions to the retirement system within sixty days under rules and regulations adopted and promulgated by the board. Information necessary to determine membership in the retirement system shall be provided by the employer.

Source: Laws 1965, c. 94, § 6, p. 405; Laws 1975, LB 32, § 1; Laws 1984, LB 216, § 3; Laws 1985, LB 349, § 1; Laws 1991, LB 549, § 3; Laws 1995, LB 501, § 1; Laws 1996, LB 1076, § 2; Laws 1997, LB 250, § 5; Laws 1997, LB 624, § 2; Laws 1998, LB 1191, § 24; Laws 2000, LB 1192, § 2; Laws 2001, LB 142, § 33; Laws 2002, LB 407, § 2; Laws 2002, LB 687, § 5; Laws 2004, LB 1097, § 3; Laws 2006, LB 366, § 3.

23-2306.01 Repealed. Laws 2006, LB 366, § 14.

23-2306.02 Retirement system; transferred employee; payment to system.

Under such rules and regulations as the retirement board adopts and promulgates, a full-time or part-time employee of a city, village, or township who becomes a county employee pursuant to a merger of services may pay to the retirement system an amount equal to the sum of all deductions which were made from the employee's compensation, plus earnings, during such period of employment with the city, village, or township. Payment shall be made within five years after the merger or prior to retirement, whichever comes first, and may be made through direct payment, installment payments, or an irrevocable payroll authorization.

Source: Laws 1997, LB 250, § 6.

23-2306.03 Retirement system; municipal county employee; participation in another governmental plan; how treated.

Under such rules and regulations as the retirement board adopts and promulgates, a full-time or part-time employee of a city, village, fire protection district, or township who becomes a municipal county employee shall transfer all of his or her funds in the retirement system of the city, village, fire protection district, or township by paying to the Retirement System for Nebraska Counties from funds held by the retirement system of the city, village, fire protection district, or township an amount equal to one of the following: (1) If the retirement system of the city, village, fire protection district, or township maintains a defined benefit plan, an amount not to exceed the initial benefit transfer value as provided in section 13-2401, leaving no funds attributable to the transferred employee within the retirement system of the city, village, fire protection district, or township; or (2) if the retirement system of the city, village, fire protection district, or township maintains a defined contribution plan, an amount not to exceed the employee and employer accounts of the transferring employee plus earnings during the period of employment with the city, village, fire protection district, or township. The employee shall receive vesting credit for his or her years of service in a governmental plan, as defined in section 414(d) of the Internal Revenue Code, maintained by the city, village, fire protection district, or township. Payment shall be made within five years after employment begins with the receiving entity or prior to retirement, whichever comes first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

Source: Laws 2001, LB 142, § 34; Laws 2006, LB 366, § 4.

23-2307 Retirement system; members; contribution; amount; county pay.

Each employee who is a member of the retirement system shall pay to the county or have picked up by the county a sum equal to four and one-half percent of his or her compensation for each pay period. The county shall pick up the employee contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code as defined in section 49-801.01, except that the county shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the code, these contributions shall not be included as gross income of the employee until such time as they are distributed or made available. The county shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee. The county shall pick up these contributions by a compensation deduction through a reduction in the cash compensation of the employee. Employee contributions picked up shall be treated for all purposes of the County Employees Retirement Act in the same manner and to the extent as employee contributions made prior to the date picked up.

Source: Laws 1965, c. 94, § 7, p. 405; Laws 1981, LB 459, § 1; Laws 1984, LB 218, § 1; Laws 1985, LB 347, § 4; Laws 1991, LB 549, § 4; Laws 1992, LB 1057, § 1; Laws 1995, LB 574, § 31; Laws 2001, LB 186, § 1; Laws 2001, LB 408, § 1.

23-2308 Retirement system; county clerk; payment; fees.

The county clerk shall pay to the board or an entity designated by the board an amount equal to two hundred fifty percent of the amounts deducted from the compensation of employees in accordance with the provisions of section 23-2307, which two hundred fifty percent equals the employees' contributions plus the county's contributions of one hundred fifty percent of the employees' contributions. The board may charge the county an administrative processing fee of twenty-five dollars if the reports of necessary information or payments made pursuant to this section are received later than the date on which the board requires that such information or money should be received. In addition, the board may charge the county a late fee of thirty-eight thousandths of one percent of the amount required to be submitted pursuant to this section for each day such amount has not been received or in an amount equal to the amount of any costs incurred by the member due to the late receipt of contributions, whichever is greater. The late fee may be used to make a member's account whole for any costs that may have been incurred by the member due to the late receipt of contributions.

Source: Laws 1965, c. 94, § 8, p. 405; Laws 1981, LB 459, § 2; Laws 1991, LB 549, § 5; Laws 1992, LB 1057, § 2; Laws 1993, LB 417, § 2; Laws 1998, LB 1191, § 25; Laws 2002, LB 407, § 3; Laws 2005, LB 364, § 1.

23-2308.01 Cash balance benefit; election; effect; administrative services agreements; authorized.

(1) It is the intent of the Legislature that, in order to improve the competitiveness of the retirement plan for county employees, a cash balance benefit shall be added to the County Employees Retirement Act on and after January 1, 2003. Each member who is employed and participating in the retirement system prior to January 1, 2003, may either elect to continue participation in the defined contribution benefit as provided in the act prior to January 1, 2003, or elect to participate in the cash balance benefit as set forth in this section. The member shall make the election prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008. If no election is made prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008, the member shall be treated as though he or she elected to continue participating in the defined contribution benefit as provided in the act prior to January 1, 2003. Members who elect to participate in the cash balance benefit on or after November 1, 2007, but before January 1, 2008, shall commence participation in the cash balance benefit on January 1, 2008. Any member who made the election prior to January 1, 2003, does not have to reelect the cash balance benefit on or after November 1, 2007, but before January 1, 2008.

(2) For a member employed and participating in the retirement system beginning on and after January 1, 2003, or a member employed and participating in the retirement system on January 1, 2003, who, prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008, elects to convert his or her employee and employer accounts to the cash balance benefit:

(a) The employee cash balance account shall, at any time, be equal to the following:

(i) The initial employee account balance, if any, transferred from the defined contribution plan account described in section 23-2309; plus

(ii) Employee contribution credits deposited in accordance with section 23-2307; plus

(iii) Interest credits credited in accordance with subdivision (19) of section 23-2301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317; and

(b) The employer cash balance account shall, at any time, be equal to the following:

(i) The initial employer account balance, if any, transferred from the defined contribution plan account described in section 23-2310; plus

(ii) Employer contribution credits deposited in accordance with section 23-2308; plus

(iii) Interest credits credited in accordance with subdivision (19) of section 23-2301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317.

(3) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the counties and their participating employees. The board may develop a schedule for the allocation of the administrative services agreements costs for accounting or record-keeping services and may assess the costs so that each member pays a reasonable fee as determined by the board. The money forfeited pursuant to section 23-2319.01 shall not be used to pay the administrative costs incurred pursuant to this subsection.

Source: Laws 2002, LB 687, § 6; Laws 2003, LB 451, § 4; Laws 2005, LB 364, § 2; Laws 2006, LB 366, § 5; Laws 2006, LB 1019, § 3; Laws 2007, LB328, § 1.

23-2309 Defined contribution benefit; employee account, defined; interest credited to account.

For a member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, a member's share of the fund arising from the compensation deductions made in accordance with section 23-2307 shall be known as his or her employee account. Each year, commencing January 1, 1975, and ending December 31, 1985, regular interest shall be credited to the employee account. As of January 1 of each such year, a member's employee account shall be equal to one hundred percent of his or her employee account as of the next preceding January 1, increased by any regular interest earned and any amounts deducted from the member's compensation since the next preceding January 1 in accordance with section 23-2307.

On and after January 1, 1986, the employee account shall be equal to the sum of the employee's stable return account, equities account, and any assets of additional accounts created pursuant to section 23-2309.01.

Source: Laws 1965, c. 94, § 9, p. 405; Laws 1974, LB 905, § 2; Laws 1983, LB 313, § 1; Laws 1985, LB 347, § 5; Laws 1991, LB 549, § 6; Laws 1994, LB 833, § 2; Laws 2002, LB 687, § 7.

23-2309.01 Defined contribution benefit; employee account; investment options; procedures; administration.

(1) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employee account to various investment options. The investment options shall include, but not be limited to, the following:

(a) An investor select account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy substantially similar to the investment allocations made by the state investment officer for the defined benefit plans under the retirement systems described in subdivision (1)(a) of section 84-1503. Investments shall most likely include domestic and international equities, fixed income investments, and real estate, as well as potentially additional asset classes;

(b) A stable return account which shall be invested by or under the direction of the state investment officer in one or more guaranteed investment contracts;

(c) An equities account which shall be invested by or under the direction of the state investment officer in equities;

(d) A balanced account which shall be invested by or under the direction of the state investment officer in equities and fixed income instruments;

(e) An index fund account which shall be invested by or under the direction of the state investment officer in a portfolio of common stocks designed to closely duplicate the total return of the Standard and Poor's 500 Index;

(f) A fixed income account which shall be invested by or under the direction of the state investment officer in fixed income instruments;

(g) A money market account which shall be invested by or under the direction of the state investment officer in short-term fixed income securities; and

(h) Beginning July 1, 2006, an age-based account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy that changes based upon the age of the member. The board shall develop an account mechanism that changes the investments as the employee nears retirement age. The asset allocation and asset classes utilized in the investments shall move from aggressive, to moderate, and then to conservative as retirement age approaches.

If a member fails to select an option or combination of options, all of his or her funds shall be placed in the option described in subdivision (b) of this subsection. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Members of the retirement system may allocate their contributions to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member may transfer any portion of his or her funds among the options, except for restrictions on transfers to or from the stable return account pursuant to rule or regulation. The board shall adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board. The money forfeited pursuant to section 23-2319.01 shall not be used to pay the administrative costs incurred pursuant to this section.

(4) In order to carry out this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the county and its participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the county shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employee account.

Source: Laws 1985, LB 347, § 11; Laws 1991, LB 549, § 7; Laws 1994, LB 833, § 3; Laws 1996, LB 847, § 4; Laws 1999, LB 703, § 2; Laws 2000, LB 1200, § 1; Laws 2001, LB 408, § 2; Laws 2002, LB 407, § 4; Laws 2002, LB 687, § 8; Laws 2005, LB 503, § 1.

23-2310 Defined contribution benefit; employer account, defined; state investment officer; duties.

(1) For a member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, a member's share of the fund arising from the county contributions shall be known as his or her employer account. Prior to January 1, 1981, as of any January 1 a member's employer account shall be equal to his or her account as of the next preceding January 1, increased by one hundred percent of any amounts deducted from the member's compensation since the next preceding January 1 in accordance with section 23-2307. As of January 1, 1982, a member's employer account shall be equal to the account as of January 1, 1981, increased by one hundred percent of the amounts deducted from the member's compensation for the first nine months of the year and one hundred fifty percent for the final three months of the year in accordance with section 23-2307. As of January 1, 1983, and each year thereafter, the member's employer account shall be equal to the account as of the next preceding January 1 increased by one hundred fifty percent of the amounts deducted from the member's compensation since the next preceding January 1 in accordance with section 23-2307. The member's employer account shall be increased by any interest allocated under the provisions of the guaranteed investment contract and any gains on investments and reduced by any losses on investments, any expense charges under the guaranteed investment contract or other investments, and any expense charges incurred in connection with administering the retirement system in excess of those provided for in section 23-2319.01, except that a member who ceased being an employee since the next preceding January 1 may have his or her employer account reduced in accordance with such section. On and after July 1, 1999, the employer account shall be equal to the sum of the assets of the accounts created by the board pursuant to section 23-2310.05.

(2) On and after January 1, 1997, and until July 1, 1999, the state investment officer shall invest the employer account, and, after July 1, 1999, upon maturi-

ty, the state investment officer shall invest the employer account funds which have been invested in guaranteed investment contracts prior to January 1, 1997. On and after July 1, 1999, the employer account shall be invested pursuant to section 23-2310.05. The state investment officer shall invest or reinvest the funds in securities and investments the nature of which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another, and if the state investment officer has special skills or is appointed on the basis of representations of special skills or expertise, he or she is under a duty to use such skills.

Source: Laws 1965, c. 94, § 10, p. 406; Laws 1981, LB 462, § 1; Laws 1983, LB 313, § 2; Laws 1985, LB 347, § 6; Laws 1986, LB 311, § 3; Laws 1991, LB 549, § 8; Laws 1992, LB 1057, § 3; Laws 1994, LB 833, § 4; Laws 1996, LB 847, § 5; Laws 1997, LB 624, § 3; Laws 1999, LB 687, § 2; Laws 2002, LB 687, § 9.

At no time did the Legislature intend that a county make contributions of 250 percent of the amounts deducted from the compensation paid to the members of its retirement system. Hoiengs v. County of Adams, 254 Neb. 64, 574 N.W.2d 498 (1998).

23-2310.01 Repealed. Laws 1998, LB 1191, § 85.

23-2310.02 Repealed. Laws 1998, LB 1191, § 85.

23-2310.03 State Treasurer; duties.

The State Treasurer shall be the custodian of the funds and securities of the retirement system and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. All disbursements therefrom shall be paid by him or her only upon vouchers signed by a person authorized by the retirement board. The State Treasurer shall transmit monthly to the board a detailed statement showing all credits to and disbursements from the funds in his or her custody belonging to the retirement system.

Source: Laws 1997, LB 623, § 1.

23-2310.04 County Employees Defined Contribution Retirement Expense Fund; County Employees Cash Balance Retirement Expense Fund; created; use; investment.

(1) The County Employees Defined Contribution Retirement Expense Fund is created. The fund shall be credited with money forfeited pursuant to section 23-2319.01 and with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the County Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 23-2308.01, 23-2309.01, 23-2310, and 23-2310.05. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The County Employees Cash Balance Retirement Expense Fund is created. The fund shall be credited with money forfeited pursuant to section 23-2319.01 and with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the County Employees Retirement Act and necessary in connection with the administration and

operation of the retirement system, except as provided in sections 23-2308.01, 23-2309.01, 23-2310, and 23-2310.05. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1997, LB 623, § 2; Laws 2000, LB 1200, § 2; Laws 2001, LB 408, § 3; Laws 2003, LB 451, § 5; Laws 2005, LB 364, § 3; Laws 2007, LB 328, § 2.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

23-2310.05 Defined contribution benefit; employer account; investment options; procedures; administration.

(1) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employer account to various investment options. Such investment options shall be the same as the investment options of the employee account as provided in subsection (1) of section 23-2309.01. If a member fails to select an option or combination of options, all of his or her funds in the employer account shall be placed in the balanced account option described in subdivision (1)(d) of section 23-2309.01. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Each member of the retirement system may allocate contributions to his or her employer account to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member may transfer any portion of his or her funds among the options. The board shall adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board. The money forfeited pursuant to section 23-2319.01 shall not be used to pay the administrative costs incurred pursuant to this section.

(4) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the county shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employer account.

Source: Laws 1999, LB 687, § 1; Laws 2000, LB 1200, § 3; Laws 2001, LB 408, § 4; Laws 2002, LB 407, § 5; Laws 2002, LB 687, § 10; Laws 2004, LB 1097, § 4; Laws 2005, LB 364, § 4; Laws 2005, LB 503, § 2.

23-2311 Transferred to section 23-2333.

23-2312 Retirement system; records; contents; employer education program.

(1) The director of the Nebraska Public Employees Retirement Systems shall keep a complete record of all members with respect to names, current addresses, ages, contributions, and any other facts as may be necessary in the administration of the County Employees Retirement Act. The information in the records shall be provided by the employer in an accurate and verifiable form, as specified by the director. The director shall, from time to time, carry out testing procedures pursuant to section 84-1512 to verify the accuracy of such information. For the purpose of obtaining such facts and information, the director shall have access to the records of the various counties and state departments and agencies and the holder of the records shall comply with a request by the director for access by providing such facts and information to the director in a timely manner. A certified copy of a birth certificate or delayed birth certificate shall be prima facie evidence of the age of the person named in the certificate.

(2) The director shall develop and implement an employer education program using principles generally accepted by public employee retirement systems so that all employers have the knowledge and information necessary to prepare and file reports as the board requires.

Source: Laws 1965, c. 94, § 12, p. 406; Laws 1985, LB 347, § 7; Laws 1986, LB 311, § 4; Laws 1991, LB 549, § 9; Laws 1998, LB 1191, § 26; Laws 2000, LB 1192, § 3; Laws 2005, LB 503, § 3.

23-2313 Retirement system; Auditor of Public Accounts; audit; report.

It shall be the duty of the Auditor of Public Accounts to make an annual audit of the retirement system and an annual report to the retirement board and to the Clerk of the Legislature of the condition of the retirement system. Each member of the Legislature shall receive a copy of the report required by this section by making a request for such report to either the Auditor of Public Accounts or the retirement board.

Source: Laws 1965, c. 94, § 13, p. 407; Laws 1973, LB 214, § 2; Laws 1979, LB 322, § 5; Laws 1988, LB 1169, § 1.

23-2314 Retirement system; powers.

The retirement system may sue or be sued in the name of the system, and in all actions brought by or against it, the system shall be represented by the Attorney General.

Source: Laws 1965, c. 94, § 14, p. 407; Laws 1996, LB 847, § 6.

23-2315 Retirement system; retirement; when; conditions; application for benefits; deferment of payment; board; duties.

(1) Upon filing an application for benefits with the board, an employee may elect to retire at any time after attaining the age of fifty-five or an employee may retire as a result of disability at any age.

(2) The member shall specify in the application for benefits the manner in which he or she wishes to receive the retirement benefit under the options provided by the County Employees Retirement Act. Payment under the applica-

tion for benefits shall be made (a) for annuities, no sooner than the annuity start date, and (b) for other distributions, no sooner than the date of final account value.

(3) Payment of any benefit provided under the retirement system may not be deferred later than April 1 of the year following the year in which the employee has both attained at least age seventy and one-half years and terminated his or her employment with the county.

(4) The board shall make reasonable efforts to locate the member or the member's beneficiary and distribute benefits by the required beginning date as specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder. If the board is unable to make such a distribution, the benefit shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any member would otherwise receive under the County Employees Retirement Act.

Source: Laws 1965, c. 94, § 15, p. 407; Laws 1975, LB 47, § 2; Laws 1979, LB 391, § 1; Laws 1982, LB 287, § 1; Laws 1986, LB 311, § 5; Laws 1987, LB 296, § 1; Laws 1987, LB 60, § 1; Laws 1994, LB 833, § 7; Laws 1996, LB 1076, § 3; Laws 2003, LB 451, § 6.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

23-2315.01 Retirement for disability; application; when; medical examination.

(1) Any member, disregarding the length of service, may be retired as a result of disability either upon his or her own application or upon the application of his or her employer or any person acting in his or her behalf. Before any member may be so retired, a medical examination shall be made at the expense of the retirement system, which examination shall be conducted by a disinterested physician legally authorized to practice medicine under the laws of the state in which he or she practices, such physician to be selected by the retirement board, and the physician shall certify to the board that the member should be retired because he or she suffers from an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. The application for disability retirement shall be made within one year of termination of employment.

(2) The retirement board may require any disability beneficiary who has not attained the age of sixty-five to undergo a medical examination at the expense of the board once each year. Should any disability beneficiary refuse to undergo such an examination, his or her disability retirement benefit may be discontinued by the board.

Source: Laws 1975, LB 47, § 3; Laws 1997, LB 623, § 5; Laws 2001, LB 408, § 5.

23-2316 Retirement system; retirement value for employee.

The retirement value for any employee who retires under the provisions of section 23-2315 shall be (1) for participants in the defined contribution benefit, the sum of the employee's employee account and employer account as of the

date of final account value and (2) for participants in the cash balance benefit, the benefit provided in section 23-2308.01 as of the date of final account value.

Source: Laws 1965, c. 94, § 16, p. 407; Laws 2002, LB 687, § 11; Laws 2003, LB 451, § 7.

23-2317 Retirement system; future service retirement benefit; when payable; how computed; selection of annuity; board; provide tax information.

(1) The future service retirement benefit shall be an annuity, payable monthly with the first payment made no earlier than the annuity start date, which shall be the actuarial equivalent of the retirement value as specified in section 23-2316 based on factors determined by the board, except that gender shall not be a factor when determining the amount of such payments pursuant to subsection (2) of this section.

Except as provided in section 42-1107, at any time before the annuity start date, the retiring employee may choose to receive his or her annuity either in the form of an annuity as provided under subsection (4) of this section or any optional form that is determined by the board.

Except as provided in section 42-1107, in lieu of the future service retirement annuity, a retiring employee may receive a benefit not to exceed the amount in his or her employer and employee accounts as of the date of final account value payable in a lump sum and, if the employee chooses not to receive the entire amount in such accounts, an annuity equal to the actuarial equivalent of the remainder of the retirement value, and the employee may choose any form of such annuity as provided for by the board.

In any case, the amount of the monthly payment shall be such that the annuity chosen shall be the actuarial equivalent of the retirement value as specified in section 23-2316 except as provided in this section.

The board shall provide to any county employee who is eligible for retirement, prior to his or her selecting any of the retirement options provided by this section, information on the federal and state income tax consequences of the various annuity or retirement benefit options.

(2) Except as provided in subsection (4) of this section, the monthly income payable to a member retiring on or after January 1, 1984, shall be as follows:

He or she shall receive at retirement the amount which may be purchased by the accumulated contributions based on annuity rates in effect on the annuity start date which do not utilize gender as a factor, except that such amounts shall not be less than the retirement income which can be provided by the sum of the amounts derived pursuant to subdivisions (a) and (b) of this subsection as follows:

(a) The income provided by the accumulated contributions made prior to January 1, 1984, based on male annuity purchase rates in effect on the date of purchase; and

(b) The income provided by the accumulated contributions made on and after January 1, 1984, based on the annuity purchase rates in effect on the date of purchase which do not use gender as a factor.

(3) Any amount, in excess of contributions, which may be required in order to purchase the retirement income specified in subsection (2) of this section shall be withdrawn from the County Equal Retirement Benefit Fund.

(4)(a) The normal form of payment shall be a single life annuity with five-year certain, which is an annuity payable monthly during the remainder of the member's life with the provision that, in the event of his or her death before sixty monthly payments have been made, the monthly payments will be continued to his or her estate or to the beneficiary he or she has designated until sixty monthly payments have been made in total. Such annuity shall be equal to the actuarial equivalent of the member cash balance account or the sum of the employee and employer accounts, whichever is applicable, as of the date of final account value. As a part of the annuity, the normal form of payment may include a two and one-half percent cost-of-living adjustment purchased by the member, if the member elects such a payment option.

Except as provided in section 42-1107, a member may elect a lump-sum distribution of his or her member cash balance account as of the date of final account value upon termination of service or retirement.

For a member employed and participating in the retirement system prior to January 1, 2003, who has elected to participate in the cash balance benefit pursuant to section 23-2308.01, or for a member employed and participating in the retirement system beginning on and after January 1, 2003, the balance of his or her member cash balance account as of the date of final account value shall be converted to an annuity using an interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

For an employee who is a member prior to January 1, 2003, who has elected not to participate in the cash balance benefit prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008, pursuant to section 23-2308.01, and who, at the time of retirement, chooses the annuity option rather than the lump-sum option, his or her employee and employer accounts as of the date of final account value shall be converted to an annuity using an interest rate that is equal to the lesser of (i) the Pension Benefits Guarantee Corporation initial interest rate for valuing annuities for terminating plans as of the beginning of the year during which payment begins plus three-fourths of one percent or (ii) the interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

(b) For the calendar year beginning January 1, 2003, and each calendar year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level-payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of January 1, 2003, if any, shall be amortized over a twenty-five-year period. During each subsequent actuarial valuation, changes in the unfunded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a twenty-five-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of

all contributions required pursuant to the County Employees Retirement Act, there shall be a supplemental appropriation sufficient to pay for the difference between the actuarially required contribution rate and the rate of all contributions required pursuant to the act.

(c) If the unfunded accrued actuarial liability under the entry age actuarial cost method is less than zero on an actuarial valuation date, and on the basis of all data in the possession of the retirement board, including such mortality and other tables as are recommended by the actuary engaged by the retirement board and adopted by the retirement board, the retirement board may elect to pay a dividend to all members participating in the cash balance option in an amount that would not increase the actuarial contribution rate above ninety percent of the actual contribution rate. Dividends shall be credited to the employee cash balance account and the employer cash balance account based on the account balances on the actuarial valuation date. In the event a dividend is granted and paid after the actuarial valuation date, interest for the period from the actuarial valuation date until the dividend is actually paid shall be paid on the dividend amount. The interest rate shall be the interest credit rate earned on regular contributions.

(5) At the option of the retiring member, any lump sum or annuity provided under this section or section 23-2334 may be deferred to commence at any time, except that no benefit shall be deferred later than April 1 of the year following the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the county. Such election by the retiring member may be made at any time prior to the commencement of the lump-sum or annuity payments.

Source: Laws 1965, c. 94, § 17, p. 407; Laws 1979, LB 416, § 2; Laws 1981, LB 462, § 2; Laws 1983, LB 210, § 1; Laws 1985, LB 347, § 8; Laws 1986, LB 311, § 6; Laws 1987, LB 60, § 2; Laws 1992, LB 543, § 1; Laws 1993, LB 417, § 3; Laws 1996, LB 1273, § 15; Laws 2002, LB 687, § 12; Laws 2003, LB 451, § 8; Laws 2006, LB 1019, § 4; Laws 2007, LB328, § 3.

23-2317.01 County Equal Retirement Benefit Fund; created; use.

There is hereby created the County Equal Retirement Benefit Fund to be administered by the board. Each county participating in the retirement system on January 1, 1984, pursuant to the County Employees Retirement Act shall make a contribution at least once a year to the fund, in addition to any other retirement contributions. Such contribution shall be in an amount determined by the board to provide all similarly situated male and female members of the retirement system with equal benefits pursuant to subsection (2) of section 23-2317 and to provide for direct expenses incurred in administering the fund. The board shall keep a record of the contributions made by each county.

Source: Laws 1983, LB 210, § 4; Laws 1991, LB 549, § 10; Laws 1998, LB 1191, § 27.

23-2318 Transferred to section 23-2334.

23-2319 Termination of employment; termination benefit; vesting.

(1) Except as provided in section 42-1107, upon termination of employment, except for retirement or disability, and after filing an application with the board, a member may receive:

(a) If not vested, a termination benefit equal to the amount of his or her employee account or member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years; or

(b) If vested, a termination benefit equal to (i) the amount of his or her member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years or (ii)(A) the amount of his or her employee account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years plus (B) the amount of his or her employer account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years.

The member cash balance account or employer and employee accounts of a terminating member shall be retained by the board, and the termination benefit shall be deferred until a valid application for benefits has been received.

(2) At the option of the terminating member, any lump sum of the employer account or member cash balance account or any annuity payment provided under subsection (1) of this section shall commence as of the first of the month at any time after such member has terminated his or her employment with the county and no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years. Such election by the terminating member shall be made at any time prior to the commencement of the lump-sum or annuity payments.

(3) Members of the retirement system shall be vested after a total of three years of participation in the system as a member pursuant to section 23-2306, including vesting credit. If an employee retires pursuant to section 23-2315, such employee shall be fully vested in the retirement system.

Source: Laws 1965, c. 94, § 19, p. 408; Laws 1975, LB 47, § 4; Laws 1975, LB 32, § 3; Laws 1984, LB 216, § 4; Laws 1986, LB 311, § 7; Laws 1987, LB 60, § 3; Laws 1991, LB 549, § 11; Laws 1993, LB 417, § 4; Laws 1994, LB 1306, § 1; Laws 1996, LB 1076, § 4; Laws 1996, LB 1273, § 16; Laws 1997, LB 624, § 4; Laws 1998, LB 1191, § 28; Laws 2002, LB 687, § 13; Laws 2003, LB 451, § 9; Laws 2006, LB 366, § 6.

23-2319.01 Termination of employment; account forfeited; when; County Employer Retirement Expense Fund; created; investment.

(1) For a member who has terminated employment and is not vested, the balance of the member's employer account or employer cash balance account

shall be forfeited. The forfeited account shall be credited to the County Employees Retirement Fund and shall first be used to meet the expense charges incurred by the retirement board in connection with administering the retirement system, which charges shall be credited to the County Employees Defined Contribution Retirement Expense Fund, if the member participated in the defined contribution option, or to the County Employees Cash Balance Retirement Expense Fund, if the member participated in the cash balance option, and the remainder, if any, shall then be used to reduce the county contribution which would otherwise be required to fund future service retirement benefits or to restore employer accounts or employer cash balance accounts. No forfeited amounts shall be applied to increase the benefits any member would otherwise receive under the County Employees Retirement Act.

(2) If a member ceases to be an employee due to the termination of his or her employment by the county and a grievance or other appeal of the termination is filed, transactions involving forfeiture of his or her employer account or employer cash balance account shall be suspended pending the final outcome of the grievance or other appeal.

(3) The County Employer Retirement Expense Fund is created. The fund shall be administered by the Public Employees Retirement Board. The fund shall consist of any reduction in a county contribution which would otherwise be required to fund future service retirement benefits or to restore employer accounts or employer cash balance accounts referred to in subsection (1) of this section. The fund shall be established and maintained separate from any funds held in trust for the benefit of members under the county employees retirement system. Expenses incurred as a result of a county depositing amounts into the fund shall be deducted prior to any additional expenses being allocated. Any remaining amount shall be allocated in accordance with section 23-2319.02. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1997, LB 624, § 5; Laws 2000, LB 1200, § 4; Laws 2002, LB 687, § 14; Laws 2003, LB 451, § 10; Laws 2005, LB 364, § 5; Laws 2007, LB328, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

23-2319.02 County Employer Retirement Expense Fund; State Employer Retirement Expense Fund; use.

(1) The County Employer Retirement Expense Fund shall be used to meet expenses of the county employees retirement system whether such expenses are incurred in administering the member's employer account or in administering the member's employer cash balance account when the funds available in the County Employees Defined Contribution Retirement Expense Fund or County Employees Cash Balance Retirement Expense Fund make such use reasonably necessary.

(2) The State Employer Retirement Expense Fund shall be used to meet expenses of the State Employees Retirement System of the State of Nebraska whether such expenses are incurred in administering the member's employer account or in administering the member's employer cash balance account

when the funds available in the State Employees Defined Contribution Retirement Expense Fund or State Employees Cash Balance Retirement Expense Fund make such use reasonably necessary.

Source: Laws 2005, LB 364, § 22; Laws 2007, LB328, § 5.

23-2320 Employee; reemployment; status; how treated.

(1) Except as otherwise provided in this section, a member of the retirement system who has a five-year break in service shall upon reemployment be considered a new employee with respect to the County Employees Retirement Act and shall not receive credit for service prior to his or her reemployment date.

(2)(a) A member who ceases to be an employee before becoming eligible for retirement under section 23-2315 and again becomes a permanent full-time or permanent part-time county employee prior to having a five-year break in service shall immediately be reenrolled in the retirement system and resume making contributions under rules and regulations adopted by the board. For purposes of vesting employer contributions made prior to and after the reentry into the retirement system under subsection (3) of section 23-2319, years of participation include years of participation prior to such employee's original termination. For a member who is not vested and has received a termination benefit pursuant to section 23-2319, the years of participation prior to such employee's original termination shall be limited in a ratio equal to the amount that the member repays divided by the termination benefit withdrawn pursuant to section 23-2319.

(b) The reemployed member may repay the value of, or a portion of the value of, the termination benefit withdrawn pursuant to section 23-2319. A reemployed member who elects to repay all or a portion of the value of the termination benefit withdrawn pursuant to section 23-2319 shall repay the actual earnings on such value. Repayment of the termination benefit shall commence within three years of reemployment and shall be completed within five years of reemployment or prior to termination of employment, whichever occurs first, through (i) direct payments to the retirement system, (ii) installment payments made pursuant to a binding irrevocable payroll deduction authorization made by the member, (iii) an eligible rollover distribution as provided under the Internal Revenue Code, or (iv) a direct rollover distribution made in accordance with section 401(a)(31) of the Internal Revenue Code.

(c) The value of the member's forfeited employer account or employer cash balance account, as of the date of forfeiture, shall be restored in a ratio equal to the amount of the benefit that the member has repaid divided by the termination benefit received. The employer account or employer cash balance account shall be restored first out of the current forfeiture amounts and then by additional employer contributions.

(3) For a member who retired pursuant to section 23-2315 and becomes a permanent full-time employee or permanent part-time employee with a county under the County Employees Retirement Act more than one hundred twenty days after his or her retirement date, the member shall continue receiving retirement benefits. Such a retired member or a retired member who received a lump-sum distribution of his or her benefit shall be considered a new employee as of the date of reemployment and shall not receive credit for any service prior to the member's retirement for purposes of the act.

(4) A member who is reinstated as an employee pursuant to a grievance or appeal of his or her termination by the county shall be a member upon reemployment and shall not be considered to have a break in service for such period of time that the grievance or appeal was pending.

Source: Laws 1965, c. 94, § 20, p. 409; Laws 1985, LB 347, § 9; Laws 1991, LB 549, § 12; Laws 1993, LB 417, § 5; Laws 1997, LB 624, § 6; Laws 1999, LB 703, § 3; Laws 2002, LB 407, § 6; Laws 2002, LB 687, § 15; Laws 2003, LB 451, § 11; Laws 2004, LB 1097, § 5; Laws 2007, LB328, § 6.

23-2321 Retirement system; employee; death before retirement; death benefit.

In the event of the death before his or her retirement date of any employee who is a member of the system, the death benefit shall be equal to (1) for participants in the defined contribution benefit, the total of the employee account and the employer account and (2) for participants in the cash balance benefit, the benefit provided in section 23-2308.01. The death benefit shall be paid to the member's beneficiary, to an alternate payee pursuant to a qualified domestic relations order as provided in section 42-1107, or to the member's estate if there are no designated beneficiaries. If the beneficiary is not the member's surviving spouse, the death benefit shall be paid as a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death. If the sole primary beneficiary is the member's surviving spouse, the surviving spouse may elect to receive an annuity calculated as if the member retired and selected a one-hundred-percent joint and survivor annuity effective on the annuity purchase date. If the surviving spouse does not elect the annuity option within one hundred twenty days after the death of the member, the surviving spouse shall receive a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death.

Source: Laws 1965, c. 94, § 21, p. 409; Laws 1975, LB 47, § 5; Laws 1985, LB 347, § 10; Laws 1994, LB 1306, § 2; Laws 1996, LB 1273, § 17; Laws 2002, LB 687, § 16; Laws 2003, LB 451, § 12; Laws 2004, LB 1097, § 6.

23-2322 Retirement system; retirement benefits; exemption from legal process; exception.

All annuities or benefits which any person shall be entitled to receive under the County Employees Retirement Act shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable except to the extent that such annuities or benefits are subject to a qualified domestic relations order under the Spousal Pension Rights Act.

Source: Laws 1965, c. 94, § 22, p. 409; Laws 1985, LB 347, § 12; Laws 1986, LB 311, § 8; Laws 1989, LB 506, § 1; Laws 1996, LB 1273, § 18.

Cross References

Spousal Pension Rights Act, see section 42-1101.

23-2323 Transferred to section 23-2335.

23-2323.01 Reemployment; military service; contributions; effect.

(1) Any employee who, while an employee, entered into and served in the armed forces of the United States and who within ninety days after honorable discharge or honorable separation from active duty again became an employee shall be credited, for the purposes of section 23-2315, with all the time actually served in the armed forces as if such person had been an employee throughout such service in the armed forces pursuant to the terms and conditions of subsection (2) of this section.

(2) Under such rules and regulations as the retirement board adopts and promulgates, an employee who is reemployed on or after December 12, 1994, pursuant to 38 U.S.C. 4301 et seq., may pay to the retirement system an amount equal to the sum of all deductions which would have been made from the employee's compensation during such period of military service. Payment shall be made within the period required by law, not to exceed five years. To the extent that payment is made, (a) the employee shall be treated as not having incurred a break in service by reason of his or her period of military service, (b) the period of military service shall be credited for the purposes of determining the nonforfeitability of the member's accrued benefits and the accrual of benefits under the plan, and (c) the employer shall allocate the amount of employer contributions to the member's employer account in the same manner and to the same extent the allocation occurs for other employees during the period of service. For purposes of member and employer contributions under this section, the member's compensation during the period of military service shall be the rate the member would have received but for the military service or, if not reasonably determinable, the average rate the member received during the twelve-month period immediately preceding military service.

(3) The employer shall pick up the member contributions made through irrevocable payroll deduction authorizations pursuant to this section, and the contributions so picked up shall be treated as employer contributions in the same manner as contributions picked up under section 23-2307.

Source: Laws 1996, LB 847, § 7; Laws 1998, LB 1191, § 29; Laws 1999, LB 703, § 4.

23-2323.02 Direct rollover; terms, defined; distributee; powers; board; duties.

(1) For purposes of this section and section 23-2323.03:

(a) Distributee means the member, the member's surviving spouse, or the member's former spouse who is an alternate payee under a qualified domestic relations order as defined in section 414(p) of the Internal Revenue Code;

(b) Direct rollover means a payment by the retirement system to the eligible retirement plan or plans specified by the distributee;

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an individual retirement annuity described in section 408(b) of the code, except for an endowment contract, (iii) a qualified plan described in section 401(a) of the code, (iv) an annuity plan described in section 403(a) or 403(b) of the code, and (v) a plan described in section 457(b) of the code and maintained by a governmental employer. For eligible rollover distributions to a surviving

spouse, an eligible retirement plan means subdivisions (1)(c)(i) through (iv) of this section; and

(d) Eligible rollover distribution means any distribution to a distributee of all or any portion of the balance to the credit of the distributee in the plan, except such term shall not include any distribution which is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life of the distributee or joint lives of the distributee and the distributee's beneficiary or for the specified period of ten years or more and shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code.

(2) For distributions made to a distributee on or after January 1, 1993, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee.

(3) The board shall adopt and promulgate rules and regulations for direct rollover procedures which are consistent with section 401(a)(31) of the Internal Revenue Code and which include, but are not limited to, the form and time of direct rollover distributions.

Source: Laws 1996, LB 847, § 8; Laws 2002, LB 407, § 7.

23-2323.03 Retirement system; accept payments and rollovers; limitations; board; duties.

(1) The retirement system may accept cash rollover contributions from a member who is making payment pursuant to section 23-2306.02, 23-2306.03, 23-2320, or 23-2323.01 if the contributions do not exceed the amount authorized to be paid by the member pursuant to section 23-2306.02, 23-2306.03, 23-2320, or 23-2323.01, and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified plan under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, the entire amount of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified plan under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days from the date of the distribution from the qualified plan, individual retirement account, or individual retirement annuity.

(2) Cash transferred to the retirement system as a rollover contribution shall be deposited as other payments made under section 23-2306.02, 23-2306.03, 23-2320, or 23-2323.01.

(3) Under the same conditions as provided in subsection (1) of this section, the retirement system may accept eligible rollover distributions from (a) an annuity contract described in section 403(b) of the Internal Revenue Code, (b) a plan described in section 457(b) of the code which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, or (c) the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the code that is eligible to be rolled over and would otherwise be includible in gross income. Amounts accepted pursuant to this subsection shall be deposited as all other payments under this section.

(4) The retirement system may accept direct rollover distributions made from a qualified plan pursuant to section 401(a)(31) of the Internal Revenue Code. The direct rollover distribution shall be deposited as all other payments under this section.

(5) The board shall adopt and promulgate rules and regulations defining procedures for acceptance of rollovers which are consistent with sections 401(a)(31) and 402 of the Internal Revenue Code.

Source: Laws 1996, LB 847, § 9; Laws 1997, LB 250, § 7; Laws 1997, LB 624, § 7; Laws 2001, LB 142, § 35; Laws 2002, LB 407, § 8.

23-2323.04 Retirement system; accept transfers; limitations; how treated.

The retirement system may accept as payment for withdrawn amounts made pursuant to the County Employees Retirement Act a direct trustee-to-trustee transfer from (1) an eligible tax-sheltered annuity plan as described in section 403(b) of the Internal Revenue Code or (2) an eligible deferred compensation plan as described in section 457(b) of the code on behalf of a member who is making payments for such amounts. The amount transferred shall not exceed the amount withdrawn and such transferred amount shall qualify as a purchase of permissive service credit by the member as defined in section 415 of the code.

Source: Laws 2002, LB 407, § 9.

23-2324 Retirement system; membership status; not lost while employment continues.

Persons who have become members of the retirement system shall not thereafter lose their status as members while they remain employees.

Source: Laws 1965, c. 94, § 24, p. 409.

23-2325 Retirement system; false or fraudulent actions; prohibited acts; penalty; denial of benefits.

Any person who, knowing it to be false or fraudulent, presents or causes to be presented a false or fraudulent claim or benefit application, any false or fraudulent proof in support of such a claim or benefit, or false or fraudulent information which would affect a future claim or benefit application to be paid under the retirement system for the purpose of defrauding or attempting to defraud the retirement system shall be guilty of a Class II misdemeanor. The retirement board shall deny any benefits that it determines are based on false or fraudulent information and shall have a cause of action against the member to recover any benefits already paid on the basis of such information.

Source: Laws 1965, c. 94, § 25, p. 410; Laws 1977, LB 40, § 98; Laws 1998, LB 1191, § 32.

23-2326 Retirement benefits; declared additional to benefits under federal Social Security Act.

The retirement allowances and benefits provided for by the County Employees Retirement Act shall be in addition to benefits and allowances payable under the provisions of the federal Social Security Act.

Source: Laws 1965, c. 94, § 26, p. 410; Laws 1985, LB 347, § 13.

23-2327 Repealed. Laws 2002, LB 687, § 34.

23-2328 Retirement system; elected officials and employees having regular term; when act operative.

The provisions of the County Employees Retirement Act pertaining to elected officials or other employees having a regular term of office shall be so interpreted as to effectuate its general purpose and to take effect as soon as the same may become operative under the Constitution of the State of Nebraska.

Source: Laws 1965, c. 94, § 28, p. 410; Laws 1985, LB 347, § 15.

23-2329 Retirement system; when effective.

The County Employees Retirement Act shall become effective for each county upon its adoption by the county board or on January 1, 1987, whichever is earlier.

Source: Laws 1965, c. 94, § 29, p. 410; Laws 1975, LB 45, § 2; Laws 1985, LB 347, § 16; Laws 1985, LB 432, § 3.

Cross References

County with one hundred fifty thousand inhabitants or more, provisions applicable if retirement system not adopted, see section 23-1118.

23-2330 Retirement system; adoption; certification; list of eligible employees to retirement board.

Upon the adoption of the retirement system by the county board, the county clerk shall certify such action to the retirement board. Upon the adoption of the retirement system by the county board or by January 1, 1987, whichever is earlier, the county clerk shall submit to the board a list of all employees then eligible for participation in the plan, which list shall state the name and address of the employee and his or her gross monthly wage.

Source: Laws 1965, c. 94, § 30, p. 410; Laws 1967, c. 133, § 1, p. 418; Laws 1973, LB 216, § 2; Laws 1975, LB 45, § 3; Laws 1985, LB 347, § 17; Laws 1985, LB 432, § 4.

23-2330.01 Limitation of actions.

Every claim and demand under the County Employees Retirement Act and against the retirement system or the retirement board shall be forever barred unless the action is brought within two years of the time at which the claim accrued.

Source: Laws 1996, LB 1076, § 6.

23-2330.02 Retirement system contributions, property, and rights; how treated.

All contributions to the retirement system, all property and rights purchased with the contributions, and all investment income attributable to the contributions, property, or rights shall be held in trust by the State of Nebraska for the exclusive benefit of members and their beneficiaries and shall only be used to pay benefits to such persons and to pay administrative expenses according to the provisions of the County Employees Retirement Act.

Source: Laws 1998, LB 1191, § 30.

23-2330.03 Termination of system or contributions; effect.

Upon termination or partial termination of the retirement system or upon complete discontinuance of contributions under the retirement system, the rights of all affected members to the amounts credited to the members' accounts shall be nonforfeitable.

Source: Laws 1998, LB 1191, § 31.

23-2330.04 Municipal county; duties.

The municipal county shall be responsible for making contributions and performing other duties and shall exercise the powers of a county under the County Employees Retirement Act with respect to the employees of the municipal county.

Source: Laws 2001, LB 142, § 36.

23-2331 Act, how cited.

Sections 23-2301 to 23-2332.01 shall be known and may be cited as the County Employees Retirement Act.

Source: Laws 1965, c. 94, § 31, p. 411; Laws 1985, LB 347, § 18; Laws 1991, LB 549, § 13; Laws 1994, LB 833, § 8; Laws 1995, LB 501, § 3; Laws 1996, LB 847, § 10; Laws 1996, LB 1076, § 7; Laws 1997, LB 250, § 8; Laws 1997, LB 623, § 6; Laws 1997, LB 624, § 8; Laws 1998, LB 1191, § 33; Laws 1999, LB 687, § 3; Laws 2001, LB 142, § 37; Laws 2001, LB 186, § 2; Laws 2002, LB 407, § 10; Laws 2002, LB 687, § 17.

23-2332 County in excess of 85,000; commissioned law enforcement personnel; supplemental retirement plan.

Any county with a population in excess of eighty-five thousand inhabitants which participates in the Retirement System for Nebraska Counties established by the County Employees Retirement Act shall establish and fund a supplemental retirement plan for the benefit of all present and future commissioned law enforcement personnel employed by such county. The auxiliary benefit plan shall be funded by additional contributions to the county employees retirement plan in excess of the amounts established by sections 23-2307 and 23-2308. The additional contributions made by employees shall be credited to the employee account, and contributions paid by the county shall be credited to the employer account, with each amount to be established at a rate of two percent of compensation. All contributions made pursuant to this section shall be invested and administered according to the County Employees Retirement Act.

Source: Laws 1985, LB 432, § 5; Laws 1991, LB 549, § 14.

23-2332.01 County of 85,000 or less; commissioned law enforcement personnel; supplemental retirement plan.

Any county with a population of eighty-five thousand inhabitants or less which participates in the Retirement System for Nebraska Counties established by the County Employees Retirement Act shall establish and fund a supplemental retirement plan for the benefit of all present and future commissioned law enforcement personnel employed by such county who possess a valid law enforcement officer certificate or diploma, as established by the Nebraska

Police Standards Advisory Council. The auxiliary benefit plan shall be funded by additional contributions to the county employees retirement plan in excess of the amounts established by sections 23-2307 and 23-2308. The additional contributions made by employees shall be credited to the employee account, and contributions paid by the county shall be credited to the employer account, with each amount to be established at a rate of one percent of compensation. All contributions made pursuant to this section shall be invested and administered according to the County Employees Retirement Act.

Source: Laws 2001, LB 186, § 3.

23-2333 Retirement; prior service annuity; how computed.

For purposes of sections 23-2333 and 23-2334, the definitions found in section 23-2301 shall apply.

As of the date of adoption of the retirement system, a prior service annuity shall be computed for all employees who have been employees continuously for one year prior to the date of the adoption of the retirement system and who are at least twenty-five years of age. Such prior service annuity shall be equal to the number of years of creditable prior service multiplied by the prior service annuity factor.

The number of years of creditable prior service shall be the number of completed years of prior service less all years during which the employee was participating in or for which he or she received a benefit from a public retirement plan, but not more than twenty-five.

The prior service annuity factor shall be the smaller of (1) one dollar or (2) the employee's compensation for the last completed twelve months of prior service divided by two thousand four hundred.

Source: Laws 1965, c. 94, § 11, p. 406; Laws 1969, c. 172, § 3, p. 753; R.S.1943, (1991), § 23-2311; Laws 1994, LB 833, § 9; Laws 1998, LB 1191, § 34.

23-2334 Retirement; prior service retirement benefit; how determined.

The prior service retirement benefit shall be a straight life annuity, payable monthly with the first payment made as of the annuity start date, in an amount determined in accordance with section 23-2333, except that if the monthly payment would be less than ten dollars, payments shall be made annually in advance with each annual payment equal to 11.54 multiplied by the monthly payment that would have been made in the absence of this restriction on small monthly payments, and no prior service retirement benefit shall be paid to any person who terminates his or her employment unless such person has been continuously employed by the county for ten or more years immediately prior to termination. An employee meeting such requirement and who terminates his or her employment shall not receive a prior service benefit determined in accordance with section 23-2333 prior to attaining age sixty-five.

Prior service retirement benefits shall be paid directly by the county to the retired employee.

Source: Laws 1965, c. 94, § 18, p. 408; Laws 1973, LB 352, § 1; Laws 1975, LB 32, § 2; R.S.1943, (1991), § 23-2318; Laws 1994, LB 833, § 10; Laws 2003, LB 451, § 13.

23-2335 Repealed. Laws 1998, LB 1191, § 85.

ARTICLE 24
POLITICAL SUBDIVISIONS TORT CLAIMS ACT

Section
23-2401. Transferred to section 13-902.
23-2402. Transferred to section 13-903.
23-2403. Transferred to section 13-904.
23-2404. Transferred to section 13-905.
23-2405. Transferred to section 13-906.
23-2406. Transferred to section 13-907.
23-2407. Transferred to section 13-908.
23-2408. Transferred to section 13-909.
23-2409. Transferred to section 13-910.
23-2410. Transferred to section 13-912.
23-2410.01. Transferred to section 13-911.
23-2411. Transferred to section 13-913.
23-2411.01. Transferred to section 13-914.
23-2412. Transferred to section 13-915.
23-2413. Transferred to section 13-916.
23-2414. Transferred to section 13-917.
23-2415. Transferred to section 13-918.
23-2416. Transferred to section 13-919.
23-2416.01. Transferred to section 13-920.
23-2416.02. Transferred to section 13-921.
23-2416.03. Transferred to section 13-922.
23-2417. Transferred to section 13-923.
23-2418. Transferred to section 13-924.
23-2419. Transferred to section 13-925.
23-2419.01. Transferred to section 13-926.
23-2420. Transferred to section 13-901.

23-2401 Transferred to section 13-902.

23-2402 Transferred to section 13-903.

23-2403 Transferred to section 13-904.

23-2404 Transferred to section 13-905.

23-2405 Transferred to section 13-906.

23-2406 Transferred to section 13-907.

23-2407 Transferred to section 13-908.

23-2408 Transferred to section 13-909.

23-2409 Transferred to section 13-910.

23-2410 Transferred to section 13-912.

23-2410.01 Transferred to section 13-911.

23-2411 Transferred to section 13-913.

23-2411.01 Transferred to section 13-914.

23-2412 Transferred to section 13-915.

23-2413 Transferred to section 13-916.

23-2414 Transferred to section 13-917.

23-2415 Transferred to section 13-918.

23-2416 Transferred to section 13-919.

23-2416.01 Transferred to section 13-920.

23-2416.02 Transferred to section 13-921.

23-2416.03 Transferred to section 13-922.

23-2417 Transferred to section 13-923.

23-2418 Transferred to section 13-924.

23-2419 Transferred to section 13-925.

23-2419.01 Transferred to section 13-926.

23-2420 Transferred to section 13-901.

ARTICLE 25

CIVIL SERVICE SYSTEM

(a) COUNTIES OF MORE THAN 300,000 INHABITANTS

Section
23-2501. Purpose of sections.
23-2502. Terms, defined.
23-2503. Civil Service Commission; formation.
23-2504. Commission; members; qualifications; number; election; vacancy; how filled.
23-2505. Commission; members; compensation; expenses.
23-2506. Commission; meetings; notice; rules of procedure, adopt; chairman.
23-2507. Commission; powers; duties.
23-2508. Commission; salary and pay plans for employees; recommend.
23-2509. Employees; status.
23-2510. Employee; discharged, suspended, demoted; order filed with commission; copy to employee; appeal.
23-2511. Employee; discharged, suspended, demoted; appeal; hearing; order; effect.
23-2512. Commission; subpoena, oaths, production of records; powers.
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23-2515. Commission; appeals; district court; procedure.
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(b) COUNTIES OF 150,000 TO 300,000 INHABITANTS

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23-2518.02. Transfer of employees; retirement benefits; calculation; funding.
23-2518.03. Transfer of employees; sick leave; annual leave; vacation leave; other benefits; how treated.
23-2518.04. Transfer of employees; credit for time of service; seniority.
23-2519. County service; classified and unclassified service, defined; exemptions.
23-2520. Personnel office; created; county personnel officer; board; members; costs of administering.

(a) COUNTIES OF MORE THAN 300,000 INHABITANTS

23-2501 Purpose of sections.

The purpose of sections 23-2501 to 23-2516 is to guarantee to all citizens a fair and equal opportunity for employment in the county offices governed by sections 23-2501 to 23-2516, to establish conditions of employment and to promote economy and efficiency in such offices.

Source: Laws 1971, LB 921, § 1.

23-2502 Terms, defined.

As used in sections 23-2501 to 23-2516, unless the context otherwise requires:

(1) Employees shall mean all county employees of the county. The term employees shall not include part-time employees, employees subject to the state personnel service, court-appointed employees, employees of the county attorney's office, employees of the public defender's office, dentists, physicians, practicing attorneys, deputy sheriffs, officers appointed by the Governor, or elected officers or the chief deputy of each office or the deputy of each office if there is not more than one deputy in the office;

(2) Part-time employee shall mean any person whose position is seasonal or temporary as defined by the commission;

(3) Department head shall mean an officer holding an elected office, an officer holding office by appointment of the Governor, the chief deputy of any office or the deputy if there is not more than one deputy, and such other

persons holding positions as are declared to be department heads by the county board; and

(4) Commission shall mean the Civil Service Commission.

Source: Laws 1971, LB 921, § 2; Laws 1977, LB 136, § 1; Laws 1989, LB 5, § 5.

23-2503 Civil Service Commission; formation.

In any county having a population of three hundred thousand inhabitants or more, there shall be a Civil Service Commission which shall be formed as provided in sections 23-2501 to 23-2516 within ninety days of May 21, 1971.

Source: Laws 1971, LB 921, § 3.

23-2504 Commission; members; qualifications; number; election; vacancy; how filled.

(1) The commission shall consist of five members who shall be in sympathy with the application of merit principles to public employment. No member of the commission shall be a member of any local, state or national committee of a political party or an officer or member of a committee in any partisan political club or organization.

(2) The members of the commission shall be as follows: (a) Two elected officers selected from the offices of and elected by the county commissioners, clerk, assessor, treasurer, public defender, register of deeds, clerk of the district court, surveyor and sheriff, being of opposite political parties if possible, and each party shall separately select its own member, (b) two full-time permanent county employees, and (c) one public member holding no public or political office. The initial two such employees shall be selected by the two elected officers referred to in subdivision (a) of this subdivision as follows: Any such employee who is at least twenty-one years of age may submit his name as a candidate to the elected officer of his own party who shall then select one commission member from such list of names. The four members of the commission shall then select the public member. The commission shall establish employee election procedures which shall provide that all county employees subject to sections 23-2501 to 23-2516 may vote and, if not less than twenty-one years of age, be candidates for a member of the commission. One employee member of the commission shall be a Democrat elected by the Democrat-registered employees subject to sections 23-2501 to 23-2516 and one employee member of the commission shall be a Republican elected by the Republican-registered employees subject to sections 23-2501 to 23-2516. An employee otherwise eligible to vote and be a candidate for the office of employee member of the commission, but who is not registered as either a Democrat or a Republican, may become eligible to vote, and become a candidate for the office of employee member of the commission by making a declaration that he desires to vote for such a member of the commission, or be a candidate for such office, and, in the same declaration, designating the party, Democrat or Republican, with which he desires to be affiliated for this purpose. After making such declaration, that employee shall have the same right to vote for a candidate, and be a candidate for the office of employee member of the commission as he would have had if he were a registered member of the party so designated in the declaration. The manner, form, and contents of such declaration shall be initially established by the two elected officials referred to in subdivision (2)(a)

of this section, subject to modification by the commission after it has been fully formed.

(3) The initial term of office of (a) the two elected officers shall be three years from May 21, 1971; (b) the initial term of office of the county employees shall be two years from May 21, 1971; and (c) the initial term of the public member shall be three years from May 21, 1971.

At the expiration of the initial term of office, a successor member shall be elected or appointed as provided in sections 23-2501 to 23-2516 for a term of three years. Membership on the commission of any member shall terminate upon the resignation of any member or at such time as the member no longer complies with the qualifications for election or appointment to the commission. In the event a member's term terminates prior to the expiration of the term for which he was elected or appointed, the commission shall appoint a successor complying with the same qualifications for the unexpired term.

Source: Laws 1971, LB 921, § 4.

23-2505 Commission; members; compensation; expenses.

The members of the commission shall not receive compensation for their services but shall be reimbursed for such necessary expenses and mileage as may be incurred in the performance of their duties with reimbursement for mileage to be made at the rate provided in section 81-1176. The county board shall provide sufficient funds in order that such commission may function as set forth in sections 23-2501 to 23-2516.

Source: Laws 1971, LB 921, § 5; Laws 1981, LB 204, § 31; Laws 1996, LB 1011, § 14.

23-2506 Commission; meetings; notice; rules of procedure, adopt; chairman.

The commission shall hold regular meetings at least once every three months, and shall designate the time and place thereof by notice posted in the courthouse at least seven days prior to the meeting. The commission shall adopt rules of procedure and shall keep a record of its proceedings. The commission shall also make provision for special meetings and all meetings and records of the commission shall be open to the public except as otherwise provided in sections 23-2501 to 23-2516. The commission shall elect one of its members as chairman for a period of one year or until his successor has been duly elected and qualified.

Source: Laws 1971, LB 921, § 6.

23-2507 Commission; powers; duties.

(1) The commission may prescribe the following: (a) General employment policies and procedures; (b) regulations for recruiting, examination and certification of qualified applicants for employment and the maintenance of registers of qualified candidates for employment for all employees governed by sections 23-2501 to 23-2516; (c) a system of personnel records containing general data on all employees and standards for the development and maintenance of personnel records to be maintained within the offices governed by sections 23-2501 to 23-2516; (d) regulations governing such matters as hours of work, promotions, transfers, demotions, probation, terminations and reductions in force; (e) regulations for use by all offices governed by sections 23-2501 to

23-2516 relating to such matters as employee benefits, vacation, sick leave and holidays.

(2) The commission shall require department heads to provide sufficient criteria to enable the commission to properly conduct employment examinations.

(3) The commission shall require department heads to supply to the commission position classification plans, job descriptions and job specifications.

(4) Individual personnel records shall be available for inspection only by the employee involved, his department head and such other persons as the commission shall authorize.

(5) The commission shall have such other powers as are necessary to effectuate the purposes of sections 23-2501 to 23-2516.

(6) All acts of the commission pursuant to the authority conferred in this section shall be binding on all county department heads governed by sections 23-2501 to 23-2516.

Source: Laws 1971, LB 921, § 7.

The civil service commission is a statutorily created tribunal established by the Legislature. As a statutorily created entity, the commission has only such authority as has been conferred on it by statute. Douglas Cty. Bd. of Comrs. v. Civil Serv. Comm. of Douglas Cty., 263 Neb. 544, 641 N.W.2d 55 (2002).

The mandatory retirement at age sixty-five provision adopted by the Douglas County Civil Service Commission reflects a permissible means of accomplishing a rational and reasonable objective and it is not unconstitutional. Armstrong v. Howell, 371 F.Supp. 48 (D. Neb. 1974).

23-2508 Commission; salary and pay plans for employees; recommend.

The commission may recommend to the county board salary and pay plans for the employees.

Source: Laws 1971, LB 921, § 8.

23-2509 Employees; status.

All employees governed by sections 23-2501 to 23-2516 on May 21, 1971, shall retain their employment without the necessity of taking any qualifying examination.

Source: Laws 1971, LB 921, § 9.

23-2510 Employee; discharged, suspended, demoted; order filed with commission; copy to employee; appeal.

Any employee may be discharged, suspended, or demoted in rank or compensation by his department head by a written order which shall specifically state the reasons therefor. Such order shall be filed with the commission and a copy of such order shall be served upon the employee personally or by leaving it at his usual place of residence. Any employee so affected may, within ten days after service of the order, appeal such order to the commission. Notice of such appeal shall be in writing, signed by the employee appealing, and delivered to any member of the commission. The delivery of the notice of appeal shall be sufficient to perfect an appeal and no other act shall be deemed necessary to confer jurisdiction of the commission over the appeal. In the event any employee is discharged, suspended or demoted prior to the formation of the commission, such employee may appeal the order to the commission within ten days after the formation of the commission in the manner provided in this section.

Source: Laws 1971, LB 921, § 10.

Pursuant to this section, the civil service commission is authorized to hear employee appeals from decisions where an employee is discharged, suspended, or demoted in rank or compensation by the employee's department head by a written order. The Legislature has authorized the commission to hear only those appeals which meet the requirements of this section. Douglas Cty. Bd. of Comrs. v. Civil Serv. Comm. of Douglas Cty., 263 Neb. 544, 641 N.W.2d 55 (2002).

23-2511 Employee; discharged, suspended, demoted; appeal; hearing; order; effect.

The commission shall, within two weeks after receipt of the notice of appeal, hold a public hearing thereon at which the employee shall be entitled to appear personally, be represented by counsel, cross-examine witnesses and produce evidence. The commission shall have the authority to affirm, modify or revoke the order appealed from, and the finding and the decision of the commission shall be certified to the department head who issued the order, and the finding and decision of the commission shall be binding on all parties concerned. In the event of an appeal to the commission, no order affecting an employee shall become permanent until the finding and decision of the commission shall be certified as provided in this section. Notwithstanding any other provision of sections 23-2501 to 23-2516, an employee affected by an order may request transfer to another department governed by sections 23-2501 to 23-2516 with the consent of the commission and the department head of such other department.

Source: Laws 1971, LB 921, § 11.

A plain reading of the statutes which govern the appeal process from a county commission does not reveal an express or implied legislative intent to limit objections on appeal to those claims presented to the administrative tribunal. Although appeals through administrative channels are preferred and encouraged, procedural due process defenses should not be waived if timely raised in the first judicial tribunal to review the administrative action. Ashby v. Civil Serv. Comm. of Douglas County, 241 Neb. 988, 492 N.W.2d 849 (1992).

23-2512 Commission; subpoena, oaths, production of records; powers.

To effectively carry out the duties imposed on the commission by sections 23-2501 to 23-2516, the commission shall have the power to subpoena witnesses, administer oaths, and compel the production of books and papers.

Source: Laws 1971, LB 921, § 12.

23-2513 Employee; no discrimination against because of political, racial, or religious opinions or affiliations; exceptions.

No employee or person desiring to be an employee in an office governed by sections 23-2501 to 23-2516 shall be appointed, demoted or discharged, or in any way favored or discriminated against because of political, racial, or religious opinions or affiliations, but advocating, or being a member of a political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence shall be sufficient reason to discharge an employee.

Source: Laws 1971, LB 921, § 13.

23-2514 Chief deputy or deputy; removal; effect on salary.

Notwithstanding any other provision of sections 23-2501 to 23-2516, any person who holds the position of chief deputy, or deputy if there is not more than one deputy in the office, may be removed by the elected officer from the position of chief deputy or deputy without cause but such person shall, if he has been an employee of the county for more than two years prior to his appointment as chief deputy or deputy, have the right, unless discharged or demoted as

provided in sections 23-2510 and 23-2511, to remain as a county employee at a salary not less than eighty percent of his average salary during the three preceding years.

Source: Laws 1971, LB 921, § 14.

23-2515 Commission; appeals; district court; procedure.

An appeal from a final order of the commission shall be in the manner provided in sections 25-1901 to 25-1908.

Source: Laws 1971, LB 921, § 15; Laws 1986, LB 595, § 1.

23-2516 Sections, how construed.

If any provision of sections 23-2501 to 23-2516 or of any rule, regulation or order thereunder or the application of such provision to any person or circumstances shall be held invalid, the remainder of sections 23-2501 to 23-2516 and the application of such provision of sections 23-2501 to 23-2516 or of such rule, regulation or order to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

Source: Laws 1971, LB 921, § 16.

(b) COUNTIES OF 150,000 TO 300,000 INHABITANTS

23-2517 Purpose of sections.

(1) Sections 23-2517 to 23-2533 shall be known and may be cited as the County Civil Service Act.

(2) The general purpose of the County Civil Service Act is to establish a system of personnel administration that meets the social, economic, and program needs of county offices. This system shall provide means to recruit, select, develop and maintain an effective and responsive work force, and shall include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, fringe benefits, discharge and other related activities. All appointments and promotions under the County Civil Service Act shall be made based on merit and fitness.

Source: Laws 1974, LB 995, § 1; Laws 2006, LB 808, § 7.

The board of county commissioners is required to bargain with its employees on all matters relating to employment except those covered by the specific provisions of these statutes. American Fed. of S., C. & M. Emp. v. County of Lancaster, 200 Neb. 301, 263 N.W.2d 471 (1978).

23-2518 Terms, defined.

For purposes of the County Civil Service Act:

(1) Appointing authority means elected officials and appointed department directors authorized to make appointments in the county service;

(2) Board of county commissioners means the board of commissioners of any county with a population of one hundred fifty thousand to three hundred thousand inhabitants;

(3) Classified service means the positions in the county service to which the act applies;

(4) County personnel officer means the employee designated by the board of county commissioners to administer the act;

(5) Department means a functional unit of the county government headed by an elected official or established by the board of county commissioners;

(6) Deputy means an individual who serves as the first assistant to and at the pleasure of an elected official;

(7) Elected official means an officer elected by the popular vote of the people and known as the county attorney, public defender, county sheriff, county treasurer, clerk of the district court, register of deeds, county clerk, county assessor, and county surveyor;

(8) Internal Revenue Code means the Internal Revenue Code as defined in section 49-801.01;

(9) Political subdivision means a village, city of the second class, city of the first class, city of the primary class, city of the metropolitan class, county, school district, public power district, or any other unit of local government including entities created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. Political subdivision does not include a contractor with the county;

(10) State means the State of Nebraska;

(11) Straight-time rate of pay means the rate of pay in effect on the date of transfer of employees stated in the resolution by the county board requesting the transfer; and

(12) Transferred employee means an employee of the state or a political subdivision transferred to the county pursuant to a request for such transfer made by the county under section 23-2518.01.

Source: Laws 1974, LB 995, § 2; Laws 1999, LB 272, § 11; Laws 2006, LB 808, § 8.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

23-2518.01 Transfer of employees to county; state employee; rights.

(1) The board of county commissioners may, by resolution, request that a state or political subdivision transfer employees to the county (a) if the board of county commissioners finds that direct control over such employees will be of benefit to the county, (b) pursuant to a merger of services, or (c) due to the assumption of functions of the state or a political subdivision by the county. Such resolution shall state an effective date for the transfer of such employees. If the state or political subdivision determines that the transfer of its employees is necessary or desirable and approves the request of the board of county commissioners, the employees who are being transferred shall become county employees on the effective date of the transfer as stated in the resolution of the board of county commissioners requesting such transfer.

(2) No state employee subject to a transfer under subsection (1) of this section is required to become a county employee and may instead exercise all of his or her rights under any contract involving state employees and negotiated pursuant to the Industrial Relations Act and the State Employees Collective Bargaining Act.

Source: Laws 2006, LB 808, § 9.

Cross References

Industrial Relations Act, see section 48-801.01.
State Employees Collective Bargaining Act, see section 81-1369.

23-2518.02 Transfer of employees; retirement benefits; calculation; funding.

(1) For transfers involving a retirement system which maintains a defined benefit plan, the transfer value of the transferring employee's accrued benefit shall be calculated by one or both of the retirement systems involved as follows:

(a) If the retirement system of the state or political subdivision maintains a defined benefit plan, an initial benefit transfer value of the employee's accrued benefit shall be determined by calculating the present value of the employee's retirement benefit based on the employee's years of service as of the date of transfer and the other actuarial assumptions of the retirement system of the state or political subdivision so that the effect on the retirement system of the state or political subdivision will be actuarially neutral; and

(b) If the retirement system of the county maintains a defined benefit plan, the final benefit transfer value of the employee's accrued benefit shall be determined by calculating the present value of the employee's retirement benefit as if the employee were employed on the date of transfer and had completed the same amount of service with the same compensation as the employee actually completed at the state or political subdivision prior to transfer. The calculation shall then be based on the employee's assumed years of service as of the date of transfer and the other actuarial assumptions of the retirement system of the county so that the effect on the retirement system of the county will be actuarially neutral.

(2) An employee of the state or a political subdivision who transfers from a position in the state or a political subdivision to a position in the county, and whose customary employment with the state or a political subdivision was for more than twenty hours per week shall receive credit for his or her years of participation in the retirement system of the state or political subdivision for purposes of membership in the retirement system of the county.

(3) An employee referred to in subsection (2) of this section shall have his or her participation in the retirement system of the state or political subdivision transferred to the retirement system of the county through one of the following options:

(a) If the retirement system of the county maintains a defined contribution plan, the employee shall transfer all of his or her funds by paying to the retirement system of the county from funds held by the retirement system of the state or political subdivision an amount equal to one of the following: (i) If the retirement system of the state or political subdivision maintains a defined benefit plan, an amount not to exceed the initial benefit transfer value, leaving no funds attributable to the transferred employee within the retirement system of the state or political subdivision; or (ii) if the retirement system of the state or political subdivision maintains a defined contribution plan, an amount not to exceed the employee and employer accounts of the transferring employee plus earnings during the period of employment with the state or political subdivision. The employee shall receive vesting credit for his or her years of service in a governmental plan, as defined in section 414(d) of the Internal Revenue Code, maintained by the state or political subdivision. Payment shall be made within five years after employment begins with the receiving entity or prior to

retirement whichever comes first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization; or

(b) If the retirement system of the county maintains a defined benefit plan, the employee shall transfer all of his or her funds out of the retirement system of the state or political subdivision to purchase service credits that will generate a final benefit transfer value not to exceed the employee's initial benefit transfer value in the retirement system of the state or political subdivision. After such purchase, the employee shall receive vesting credit in the retirement system of the county for his or her years of service in a governmental plan, as defined in section 414(d) of the Internal Revenue Code, maintained by the state or political subdivision. The amount to be paid by the member for such service credit shall equal the actuarial cost to the retirement system of the county for allowing such additional service credit to the employee. If any funds remain in the retirement system of the state or political subdivision after the employee has purchased service credits in the retirement system of the county, such remaining funds shall be rolled over into another qualified trust under section 401(a) of the Internal Revenue Code, an individual retirement account, or an individual retirement annuity. Payment shall be made within five years after the transfer of services, but prior to retirement, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

(4) The state or political subdivision, the county, and the employees who are being transferred may by binding agreement determine which parties will provide funds to pay any amount needed to purchase creditable service in the retirement system of the county sufficient to provide a final benefit transfer value not to exceed the employee's initial benefit transfer value, if the amount of a direct rollover from the retirement system of the state or political subdivision is not sufficient to provide a final benefit transfer value in the retirement system of the county.

(5) The retirement system of the county may accept cash rollover contributions from a member who is making payment pursuant to this section if the contributions do not exceed the amount of payment required for the service credits purchased by the member and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified trust under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, all of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified trust under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection shall be transferred to the retirement system within sixty days after the date of the distribution from the qualified trust, individual retirement account, or individual retirement annuity.

(6) Cash transferred to the retirement system of the county as a rollover contribution shall be deposited as other contributions.

(7) The retirement system of the county may accept direct rollover distributions made from a qualified trust pursuant to section 401(a)(31) of the Internal Revenue Code. The direct rollover distribution shall be deposited as all other payments under this section.

(8) The county or its retirement system shall adopt provisions defining procedures for acceptance of rollovers which are consistent with sections 401(a)(31) and 402 of the Internal Revenue Code.

(9) If the county participates in the Retirement System for Nebraska Counties and the transferred employee participates in the State Employees Retirement System, the transferred employee shall immediately begin participation in the Retirement System for Nebraska Counties under the same benefit which had been elected pursuant to subsection (1) of section 84-1309.02.

Source: Laws 2006, LB 808, § 10.

23-2518.03 Transfer of employees; sick leave; annual leave; vacation leave; other benefits; how treated.

(1) The state or a political subdivision shall transfer all accrued sick leave of the transferred employee up to the maximum number of accumulated hours for sick leave allowed by the county personnel system. The state or political subdivision shall reimburse the county for twenty-five percent of the value of the accrued sick leave hours based on the straight-time rate of pay for the employee.

(2) The transferred employee may transfer the maximum amount of accrued annual leave earned as an employee of the state or a political subdivision allowed by the county personnel system. The state or a political subdivision shall reimburse the county for one hundred percent of the value of the hours of accrued annual leave transferred.

(3) No transferred employee shall lose any accrual rate value of his or her sick leave and vacation leave as a result of becoming a county employee, and a transferred employee may credit years of service with the state or a political subdivision toward the accrual rate for sick leave and vacation leave plans. When accrued sick leave and vacation leave for a transferred employee are at a greater rate value than allowed by the county's sick leave and vacation leave plans, the state or political subdivision shall pay the county the difference between the value of the benefits allowed by the county and the state or political subdivision based on, at the time of the transfer, twenty-five percent of the employee's straight-time rate of pay for the sick leave and one hundred percent of the employee's straight-time rate of pay for vacation leave. A state or political subdivision shall reimburse the county not later than one year after the transfer is complete.

(4) The transferred employee shall not receive any additional accrual rate value for county benefits until the employee meets the qualifications for the increased accrual rates pursuant to the county's requirements.

(5) The transferred employee shall receive credit for time of service with the state or a political subdivision toward participation, coverage by insurance programs for the county, and the waiting period for medical insurance coverage provided by the county.

Source: Laws 2006, LB 808, § 11.

23-2518.04 Transfer of employees; credit for time of service; seniority.

(1) A transferred employee shall be credited for time of service with the state or a political subdivision toward the probationary period in the county:

(a) A transferred employee whose credited time of service with the state or a political subdivision does not satisfy the county's probationary period time requirement shall be a probationary employee of the county and afforded the same rights, benefits, and privileges as are afforded to a probationary employee under the county personnel system; and

(b) A transferred employee whose credited time of service with the state or a political subdivision does not satisfy the county's probationary period time requirement shall successfully complete the remainder of the county's probationary period time requirement before being given status with the county.

(2) Transferred employees shall retain seniority accumulated during service with the state or a political subdivision, and no transferred employee shall lose accumulated seniority as a result of becoming a county employee.

Source: Laws 2006, LB 808, § 12.

23-2519 County service; classified and unclassified service, defined; exemptions.

The county service shall be divided into the classified service and the unclassified service. All officers and positions of the county shall be in the classified service unless specifically designated as being in the unclassified service established by the County Civil Service Act. All county employees who have permanent status under any other act prior to the passage of the County Civil Service Act shall have status under the act without further qualification. Positions in the unclassified service shall not be governed by the act and shall include the following:

(1) County officers elected by popular vote and persons appointed to fill vacancies in such elective offices;

(2) The county personnel officer and the administrative assistant to the board of county commissioners;

(3) Bailiffs;

(4) Department heads and one principal assistant or chief deputy for each county department. When more than one principal assistant or chief deputy is mandated by law, all such positions shall be in the unclassified service;

(5) Members of boards and commissions appointed by the board of county commissioners;

(6) Persons employed in a professional or scientific capacity to make or conduct a temporary and special investigation or examination on behalf of the board of county commissioners;

(7) Attorneys;

(8) Physicians;

(9) Employees of an emergency management organization; and

(10) Deputy sheriffs.

Nothing in the act shall be construed as precluding the appointing authority from filling any positions in the unclassified service in the manner in which positions in the classified service are filled.

Source: Laws 1974, LB 995, § 3; Laws 1991, LB 117, § 1; Laws 1996, LB 43, § 4; Laws 2006, LB 808, § 13.

23-2520 Personnel office; created; county personnel officer; board; members; costs of administering.

There is hereby created a personnel office in the office of the board of county commissioners, the executive head of which shall be the county personnel officer. In such office there shall be a personnel policy board consisting of six members with powers and duties provided in the County Civil Service Act. The board of county commissioners shall make appropriations from the general fund to meet the estimated costs of administering the act.

Source: Laws 1974, LB 995, § 4; Laws 1987, LB 198, § 1; Laws 2006, LB 808, § 14.

23-2521 Personnel policy board; members; qualifications; appointment; term; removal; chairperson; meetings; quorum.

(1) The members of the personnel policy board shall be persons in sympathy with the application of merit principles to public employment and who are not otherwise employed by the county, except that the member employed by the county if serving on such board on May 6, 1987, shall continue to serve until the term of such member expires. No member shall hold during his or her term, or shall have held for a period of one year prior thereto, any political office or a position as officer or employee of a political organization.

(2) Two members of the board shall be appointed by the board of county commissioners, two members shall be appointed by the elected department heads, and two members shall be appointed by classified employees who are covered by the county personnel system.

(3) The first appointments made to the personnel policy board shall be for one, two, three, four, and five years. The board of county commissioners shall initially appoint members for terms of one and five years. The elected department heads shall initially appoint members for terms of two and four years. The classified employees who are covered by the county personnel system shall initially appoint a member for a term of three years. Within three months after May 6, 1987, the classified employees who are covered by the county personnel system shall initially appoint another member for a term of one year. Thereafter, each member shall be appointed in the same manner for a term of five years, except that any person appointed to fill a vacancy occurring prior to the expiration of a term shall be appointed in the same manner for the remainder of the term. Each member of the board shall hold office until his or her successor is appointed and qualified.

(4) The board of county commissioners and elected department heads may remove any member of the personnel policy board for neglect of duty or misconduct in office after first giving him or her a copy of the reasons for removal and providing for the member to be heard publicly before the commissioners and elected department heads. A copy of the charges and a transcript of the record of the hearing shall be filed with the county clerk.

(5) The personnel policy board shall elect a chairperson from among its members. The board shall meet at such time and place as shall be specified by call of the chairperson or the county personnel officer. At least one meeting shall be held quarterly. Four members shall constitute a quorum for the transaction of business. Board members shall serve without compensation.

Source: Laws 1974, LB 995, § 5; Laws 1987, LB 198, § 2.

23-2522 Personnel policy board; powers; duties.

The powers and duties of the personnel policy board shall be:

(1) To review and make recommendations to the board of county commissioners on the personnel rules and regulations and any amendments thereto prior to the approval by the commissioners;

(2) To advise and assist the personnel officer on matters of personnel policy, administration, and practice;

(3) To cooperate with and advise the personnel officer in fostering interest and cooperation of institutions of learning and civic, professional, and employee organizations in the improvement of personnel standards and the development of high public regard for the county as an employer and for careers in the county service;

(4) To require the personnel officer to make or to make on its own initiative any investigation which it may consider necessary concerning the management of personnel in the county service;

(5) To review any grievance or case of disciplinary action of a classified service employee when appealed by such employee in accordance with approved personnel rules and regulations and issue a determination that is binding on all parties concerned;

(6) To issue subpoenas to compel the attendance of county employees as witnesses and the production of documents and to administer oaths, take testimony, hear proofs, and receive exhibits in evidence in connection with any of the powers and duties of such board. In case of a refusal to obey a subpoena issued to any county employee, the personnel policy board on its own motion, or a party to the proceedings, may make application to the district court of Lancaster County for an enforcement order, and any failure to obey such order may be punished by such court as contempt thereof;

(7) To make annual reports and recommendations to the board of county commissioners; and

(8) To perform such other duties as may be expressly set forth in the County Civil Service Act and in the regulations adopted pursuant thereto.

Source: Laws 1974, LB 995, § 6; Laws 1987, LB 198, § 3; Laws 2006, LB 808, § 15.

23-2523 County personnel officer; appointment; qualifications.

The board of county commissioners shall appoint a county personnel officer who shall be a person experienced in the field of personnel administration and in known sympathy with the application of merit principles in public employment.

Source: Laws 1974, LB 995, § 7.

23-2524 County personnel officer; duties.

In addition to other duties imposed upon him or her by or pursuant to the County Civil Service Act, it shall be the duty of the county personnel officer:

(1) To apply and carry out the act and the rules and regulations adopted thereunder;

(2) To attend meetings of the personnel policy board and to act as its secretary and keep minutes of its proceedings;

(3) To establish and maintain a roster of all employees in the classified service, in which there shall be set forth as to each employee the class title, pay, or status, and other pertinent data;

(4) To appoint such employees of his or her office and such experts and special assistants as may be necessary to carry out effectively the act;

(5) To foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employee effectiveness, including training, safety, health, counseling, and welfare;

(6) To encourage and exercise leadership in the development of effective personnel administration with the several county agencies, departments, and institutions; and

(7) To perform such other lawful acts as he or she may consider necessary or desirable to carry out the purposes and provisions of the County Civil Service Act.

Source: Laws 1974, LB 995, § 8; Laws 2006, LB 808, § 16.

23-2525 County personnel officer; personnel rules and regulations for classified service.

The county personnel officer shall, with the assistance of two advisory groups, one of classified employees and one of department heads, prepare and submit to the personnel policy board proposed personnel rules and regulations for the classified service. He or she shall give reasonable notice thereof to the heads of all agencies, departments, county employee associations, and institutions affected thereby, and they shall be given an opportunity, upon request, to appear before the board and present their views thereon. The personnel policy board shall submit the rules and regulations for adoption or amendment and adoption by resolution of the board of county commissioners. Amendments thereto shall be made in the same manner. The rules and regulations shall provide:

(1) For a single integrated classification plan covering all positions in the county service except those expressly exempt from the County Civil Service Act, which shall group all positions into defined classes containing a descriptive class title and a code identifying each class, and which shall be based on similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required and the same schedule of pay may be equitably applied to all positions in the same class. After the classification plan has been approved by the personnel policy board, the county personnel officer shall be responsible for the administration and maintenance of the plan and for the allocation of each classified position. Any employee affected by the allocation of a position to a class shall, upon request, be given a reasonable opportunity to be heard thereon by the personnel policy board who shall issue an advisory opinion to the personnel officer;

(2) For a compensation plan for all employees in the classified service, comprising salary schedules, hours of work, premium payments, special allowances, and fringe benefits, considering the amount of money available, the prevailing rates of pay in government and private employment, the cost of living, the level of each class of position in the classification plan, and other relevant factors. Initial, intervening, and maximum rates of pay for each class shall be established to provide for steps in salary advancement without change

of duty in recognition of demonstrated quality and length of service. The compensation plan and amendments thereto shall be adopted in the manner prescribed for rules and regulations and shall in no way limit the authority of the board of county commissioners relative to appropriations for salary and wage expenditures;

(3) For open competitive examinations to test the relative fitness of applicants for the respective positions. Competitive examination shall not be required for transferred employees transferring from positions in the state or a political subdivision to positions in the county pursuant to a merger of services or transferred employees transferring from positions in the state or a political subdivision to positions in the county due to the assumption of functions of the state or a political subdivision by the county. The rules and regulations shall provide for the public announcement of the holding of examinations and shall authorize the personnel officer to prescribe examination procedures and to place the names of successful candidates on eligible lists in accordance with their respective ratings. Examinations may be assembled or unassembled and may include various job-related examining techniques, such as rating training and experience, written tests, oral interviews, recognition of professional licensing, performance tests, investigations, and any other measures of ability to perform the duties of the position. Examinations shall be scored objectively and employment registers shall be established in the order of final score. Certification of eligibility for appointment to vacancies shall be in accordance with a formula which limits selection by the hiring department from among the highest ranking available and eligible candidates, but which also permits selective certification under appropriate conditions as prescribed in the rules and regulations;

(4) For promotions which shall give appropriate consideration to examinations and to record of performance, seniority, and conduct. Vacancies shall be filled by promotion whenever practicable and in the best interest of the service, and preference may be given to employees within the department in which the vacancy occurs;

(5) For the rejection of candidates who fail to comply with reasonable requirements of the personnel officer in regard to such factors as physical conditions, training, and experience or who have been guilty of infamous or disgraceful conduct, who are addicted to alcohol or narcotics, or who have attempted any deception or fraud in connection with an examination;

(6) Prohibiting disqualification of any person from taking an examination, from promotion or from holding a position because of race, sex, unless it constitutes a bona fide occupational qualification, or national origin, physical disabilities, age, political or religious opinions or affiliations, or other factors which have no bearing upon the individual's fitness to hold the position;

(7) For a period of probation not to exceed one year before appointment or promotion may be made complete, and during which period a probationer may be separated from his or her position without the right of appeal or hearing except as provided in section 23-2531. After a probationer has been separated, he or she may again be placed on the eligible list at the discretion of the personnel officer. The rules shall provide that a probationer shall be dropped from the payroll at the expiration of his or her probationary period if, within ten days prior thereto, the appointing authority has notified the personnel officer in writing that the services of the employee have been unsatisfactory;

(8) When an employee has been promoted but fails to satisfactorily perform the duties of the new position during the probationary period, he or she shall be returned to a position comparable to that held immediately prior to promotion at the current salary of such position;

(9) For temporary or seasonal appointments of limited terms of not to exceed one year;

(10) For part-time appointment where the employee accrues benefits of full-time employment on a basis proportional to the time worked;

(11) For emergency employment for not more than thirty days with or without examination, with the consent of the county personnel officer and department head;

(12) For provisional employment without competitive examination when there is no appropriate eligible list available. No such provisional employment shall continue longer than six months, nor shall successive provisional appointments be allowed;

(13) For transfer from a position in one department to a similar position in another department involving similar qualifications, duties, responsibilities, and salary ranges;

(14) For the transfer of employees of the state or a political subdivision to the county pursuant to a merger of services or due to the assumption of functions of the state or a political subdivision by the county;

(15) For layoff by reason of lack of funds or work or abolition of the position, or material change in duties or organization, for the layoff of nontenured employees first, and for reemployment of permanent employees so laid off, giving consideration in both layoff and reemployment to performance record and seniority in service;

(16) For establishment of a plan for resolving employee grievances and complaints;

(17) For hours of work, holidays, and attendance regulations in the various classes of positions in the classified service, and for annual, sick, and special leaves of absence, with or without pay, or at reduced pay;

(18) For the development of employee morale, safety, and training programs;

(19) For a procedure whereby an appointing authority may suspend, reduce, demote, or dismiss an employee for misconduct, inefficiency, incompetence, insubordination, malfeasance, or other unfitness to render effective service and for the investigation and public hearing of appeals of such suspended, reduced, demoted, or dismissed employee;

(20) For granting of leave without pay to a permanent employee to accept a position in the unclassified service, and for his or her return to a position comparable to that formerly held in the classified service at the conclusion of such service;

(21) For regulation covering political activity of employees in the classified service; and

(22) For other regulations not inconsistent with the County Civil Service Act and which may be necessary for its effective implementation.

Source: Laws 1974, LB 995, § 9; Laws 2006, LB 808, § 17.

23-2526 Personal service; classified service; certification of payrolls.

(1) No county personnel or fiscal or other officer shall make or approve or take any part in making or approving any payment for personal service to any person holding a position in the classified service unless the payroll voucher or account of such pay bears the certification of the county personnel officer or his or her authorized agent, in the manner he or she may prescribe, that the persons named therein have been appointed and employed in accordance with the County Civil Service Act and the rules and regulations adopted hereunder.

(2) The county personnel officer may, for proper cause, withhold certification from a payroll any specific item or items thereon. The personnel officer shall provide that certification of payrolls be made each year and that such certification shall remain in effect except in the case of an officer or employee whose status has changed after the last certification of his or her payroll, in which case no voucher for payment of salary to such officer or employee shall be issued or payment of salary made without further certification by the personnel officer.

Source: Laws 1974, LB 995, § 10; Laws 2006, LB 808, § 18.

23-2527 Reciprocal agreements; county personnel officer; cooperate with other governmental agencies.

(1) Any county subject to the County Civil Service Act may enter into reciprocal agreements, upon such terms as may be agreed upon, for the use of equipment, materials, facilities, and services with any public agency or body for purposes deemed of benefit to the county personnel system.

(2) The county personnel officer, with the approval of the board of county commissioners, may cooperate with other governmental agencies charged with public personnel administration in conducting personnel tests, recruiting personnel, training personnel, establishing lists from which eligible candidates shall be certified for appointment, and for the interchange of personnel and their benefits.

Source: Laws 1974, LB 995, § 11; Laws 2006, LB 808, § 19.

23-2528 Tenure.

(1) An employee in the classified service who has completed his probationary period shall have permanent tenure until he resigns voluntarily or is separated in accordance with the rules and regulations governing retirement, dismissal or layoff.

(2) An employee in the classified service with a probationary, provisional, temporary or emergency appointment shall have no tenure under that appointment and may be separated from employment by his appointing authority without any right of appeal except as provided in section 23-2531.

Source: Laws 1974, LB 995, § 12.

23-2529 Veterans preference; passing score.

Veterans preference shall be granted to all applicants who are otherwise eligible for employment and who request such preference on their applications. In order to receive preference, the veteran must submit a copy of his or her discharge papers and, for disability credit, proof from the United States Department of Veterans Affairs that the disability is at least ten percent. To the

passing score of veteran candidates, ten points shall be added for a disabled veteran and five points for all other veterans.

Source: Laws 1974, LB 995, § 13; Laws 1991, LB 2, § 4.

23-2530 Repealed. Laws 1989, LB 5, § 7.

23-2531 Discrimination; prohibited; other prohibited acts.

(1) Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, discipline, or any other aspect of personnel administration because of political or religious opinions or affiliations or because of race, national origin, or other nonmerit factors shall be prohibited. Discrimination on the basis of age or sex or physical disability shall be prohibited unless specific age, sex, or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration. The rules and regulations shall provide for appeals in cases of alleged discrimination to the personnel policy board whose determination shall be binding upon a finding of discrimination.

(2) No person shall make any false statement, certificate, mark, rating, or report with regard to any test, certification, or appointment made under the County Civil Service Act or in any manner commit or attempt to commit any fraud preventing the impartial execution of the act and the rules and regulations promulgated pursuant to the act.

(3) No person shall, directly or indirectly, give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for or on account of any appointment, proposed appointment, promotion, or proposed promotion to, or any advantage in, a position in the classified service.

(4) No employee of the personnel office, examiner, or other person shall defeat, deceive, or obstruct any person in his or her right to examination, eligibility, certification, or appointment under the act, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any persons with respect to employment in the classified service.

Source: Laws 1974, LB 995, § 15; Laws 2006, LB 808, § 20.

23-2532 Federal merit standards; federal Hatch Act provisions; applicable to programs.

Whenever federal merit standards or the federal Hatch Act provisions are applicable to programs, the personnel policy board shall take such action as is necessary to assure that all personnel practices in those programs are in accordance with federal regulations, and those practices found not to be in compliance with such regulations shall not be implemented in those programs.

Source: Laws 1974, LB 995, § 16.

23-2533 Violations; penalty.

Any person who willfully violates any provision of the County Civil Service Act or of the rules and regulations adopted under the act shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not more than five hundred dollars, or be imprisoned in the county jail for not more than six months, or be both so fined and imprisoned.

Source: Laws 1974, LB 995, § 17; Laws 2006, LB 808, § 21.

The board of county commissioners is required to bargain with its employees on all matters relating to employment except those covered by the specific provisions of these statutes. American Fed. of S., C. & M. Emp. v. County of Lancaster, 200 Neb. 301, 263 N.W.2d 471 (1978).

(c) COUNTIES OF LESS THAN 150,000 INHABITANTS

23-2534 County board; adopt personnel policies and procedures.

The county board of any county with a population of less than one hundred fifty thousand inhabitants may adopt policies and procedures pursuant to sections 23-2534 to 23-2544 which concern employee hiring, advancement, training, career development, position classification, salary administration, fringe benefits, discharge, and other related activities.

Source: Laws 1994, LB 212, § 1.

23-2535 Terms, defined.

For purposes of sections 23-2534 to 23-2544:

(1) Appointing authority shall mean officials and appointed department directors authorized to make appointments in the county service;

(2) Classified service shall mean the positions in the county service to which sections 23-2534 to 23-2544 are made applicable;

(3) County board shall mean the board of county supervisors or board of county commissioners of a county with a population of less than one hundred fifty thousand inhabitants;

(4) County personnel officer shall mean the employee designated by the county board to administer a program adopted pursuant to sections 23-2534 to 23-2544;

(5) Department shall mean a major functional unit of the county government headed by an official or established by the county board;

(6) Deputy shall mean an individual who serves as the first assistant to and at the pleasure of an official;

(7) Lay member shall mean anyone not employed by the county or acting on its behalf other than a member of the personnel policy board; and

(8) Official shall mean an officer elected by the popular vote of the people or a person appointed to a countywide office.

Source: Laws 1994, LB 212, § 2.

23-2536 County service; classified and unclassified service, defined.

If a program is adopted pursuant to sections 23-2534 to 23-2544, the county service shall be divided into the classified service and the unclassified service. All officials and employees of the county shall be in the classified service unless specifically designated as being in the unclassified service. Positions in the unclassified service shall not be governed by personnel rules and regulations adopted pursuant to sections 23-2534 to 23-2544. Unless otherwise designated by rules and regulations adopted pursuant to sections 23-2534 to 23-2544, the unclassified service shall include the following:

(1) Officials;

(2) The county personnel officer and the administrative assistant to the county board;

(3) Bailiffs;

(4) Department heads and one principal assistant or deputy for each county department;

(5) Members of boards and commissions appointed by the county board;

(6) Persons employed in a professional or scientific capacity to make or conduct a temporary and special investigation or examination on behalf of the county board;

(7) Attorneys, including deputy county attorneys; and

(8) Employees who are covered by the State Personnel System.

Nothing in sections 23-2534 to 23-2544 shall be construed as precluding the appointing authority from filling any positions in the unclassified service in the manner in which positions in the classified service are filled.

Source: Laws 1994, LB 212, § 3; Laws 1995, LB 124, § 1.

23-2537 Personnel policy board; members; terms; removal; officers; meetings.

(1) A personnel policy board may be created by resolution of the county board. The members of a personnel policy board shall include one elected county official chosen by the elected county officials other than the members of the county board, one county board member chosen by the county board, one member chosen by the employees who are not described in subdivisions (1) through (8) of section 23-2536, one lay member chosen by the elected county officials, and one lay member chosen by the county board. All members shall serve four-year terms, except of the members first chosen, the elected county official and the county board member shall serve one-year terms, the lay member chosen by the county board shall serve a two-year term, the lay member chosen by the elected county officials shall serve a three-year term, and the member chosen by the employees shall serve a four-year term. Each member of the board shall hold office until his or her successor is appointed and qualified. Any person appointed to fill a vacancy occurring prior to the expiration of a term shall be appointed in the same manner for the remainder of the term.

(2) A majority of the county board and elected county officials may remove any member of the personnel policy board for nonattendance at three meetings.

(3) A personnel policy board shall elect a chairperson from among its members. A board shall meet at such time and place as shall be specified by call of the chairperson or the county personnel officer. At least one meeting shall be held quarterly. Three members shall constitute a quorum for the transaction of business. Board members shall serve without compensation but shall receive reimbursement for actual and necessary expenses.

Source: Laws 1994, LB 212, § 4; Laws 1995, LB 124, § 2.

23-2538 Personnel policy board; powers and duties.

The powers and duties of a personnel policy board shall be:

(1) To review and make recommendations to the county board on the personnel rules and regulations and any amendments thereto prior to the approval by the county board;

(2) To advise and assist the county personnel officer, if appointed, on matters of personnel policy, administration, and practice;

(3) To direct the county personnel officer, if appointed, in fostering the interest and cooperation of institutions of learning and civic, professional, and employee organizations in the improvement of personnel standards and the development of high public regard for the county as an employer and for careers in the county service;

(4) To require the county personnel officer, if appointed, to make any investigation which the personnel policy board may consider necessary concerning the management of personnel in the county service;

(5) To review any grievance or case of disciplinary action of a classified service employee when appealed by such employee in accordance with approved personnel rules and regulations and issue a determination that is binding on all parties concerned;

(6) To make annual reports and recommendations to the county board; and

(7) To perform such other acts and duties as may be expressly set forth in sections 23-2534 to 23-2544 and in the rules and regulations adopted pursuant thereto and such other acts and duties as directed by the county board in furtherance of the purposes of sections 23-2534 to 23-2544.

Source: Laws 1994, LB 212, § 5.

23-2539 County personnel officer; appointment.

Only the county board of a county having a personnel policy board may appoint a county personnel officer who shall be a person experienced in the field of personnel administration. The person appointed may be an elected county official, a member of the personnel policy board, a county employee, or a person employed for the position.

Source: Laws 1994, LB 212, § 6.

23-2540 County personnel officer; powers.

In addition to other duties imposed upon a county personnel officer, if appointed, a county personnel officer may:

(1) Attend meetings of the personnel policy board and act as its secretary and keep minutes of its proceedings;

(2) Establish and maintain a roster of all employees in the classified service in which there shall be set forth as to each employee the class title, pay or status, and other pertinent data;

(3) Establish and maintain a central record-keeping system for all county personnel records;

(4) Foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employee effectiveness, including training, safety, health, counseling, and welfare;

(5) Encourage and exercise leadership in the development of effective personnel administration with the several county agencies, departments, and institutions; and

(6) Perform such other lawful acts as the personnel policy board may direct.

Source: Laws 1994, LB 212, § 7.

23-2541 Personnel rules and regulations; adoption; contents.

The personnel policy board, if created, shall, with the assistance of two advisory groups, one of classified employees and one of department heads, adopt proposed personnel rules and regulations for the classified service and provide reasonable notice of proposed rules and regulations to the heads of all agencies, departments, county employee associations, and institutions affected thereby. Any person affected by such rules and regulations shall be given an opportunity, upon request, to appear before the personnel policy board and present his or her views on the rules and regulations. The personnel policy board shall submit proposed rules and regulations or amendments for adoption by the county board. The county board may consider and adopt only personnel rules and regulations or amendments proposed by the personnel policy board and may not repeal or revoke a rule or regulation except upon the recommendation of the personnel policy board.

The rules and regulations or amendments may provide:

(1) For a single integrated classification plan covering all positions in the county service except those expressly exempt from sections 23-2534 to 23-2544, which shall (a) group all positions into defined classes containing a descriptive class title and a code identifying each class and (b) be based on similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required and the same schedule of pay may be equitably applied to all positions in the same class. After the classification plan has been approved by the personnel policy board, the county personnel officer shall be responsible for the administration and maintenance of the plan and for the allocation of each classified position. Any employee affected by the allocation of a position to a class shall, upon request, be given a reasonable opportunity to be heard on such allocation by the personnel policy board which shall issue an advisory opinion to the county personnel officer;

(2) For a compensation plan for all employees in the classified service, comprising salary schedules, attendance regulations, premium payments, special allowances, and fringe benefits, considering the amount of money available, the prevailing rates of pay in government and private employment, the cost of living, the level of each class of position in the classification plan, and other relevant factors. The compensation plan and amendments to such plan shall be adopted in the manner prescribed for rules and regulations and shall in no way limit the authority of the county board relative to appropriations for salary and wage expenditures;

(3) For open competitive examinations to test the relative fitness of applicants for the respective positions. The rules and regulations shall provide for the public announcement of the holding of examinations and shall authorize the county personnel officer to prescribe examination procedures and to place the names of successful candidates on eligible lists in accordance with their respective ratings. Examinations may be assembled or unassembled and may include various job-related examining techniques, such as rating training and experience, written tests, oral interviews, recognition of professional licensing, performance tests, investigations, and any other measures of ability to perform the duties of the position. Examinations shall be scored objectively and employment registers shall be established in the order of final score. Certification of eligibility for appointment to vacancies shall be in accordance with a formula which limits selection by the hiring department from among the highest

ranking available and eligible candidates, but which also permits selective certification under appropriate conditions as prescribed in the rules and regulations;

(4) For promotions which shall give appropriate consideration to examinations and to record of performance, seniority, and conduct. Vacancies shall be filled by promotion whenever practicable and in the best interest of the service and preference may be given to employees within the department in which the vacancy occurs;

(5) For the rejection of candidates who fail to comply with reasonable requirements of the county personnel officer in regard to such factors as physical conditions, training, and experience, who have been guilty of infamous or disgraceful conduct, who are currently abusing alcohol or narcotics, or who have attempted any deception or fraud in connection with an examination;

(6) For prohibiting disqualification of any person from (a) taking an examination, (b) promotion, or (c) holding a position, solely because of race, sex, national origin, physical disabilities, age, political or religious opinions or affiliations, or other factors which have no bearing upon the individual's fitness to hold the position;

(7) For a period of probation, not to exceed one year, before appointment or promotion may be made complete and during which period a probationer may be separated from his or her position without the right of appeal or hearing. After a probationer has been separated, he or she may again be placed on the eligible list at the discretion of the county personnel officer. The rules and regulations shall provide that a probationer shall be dropped from the payroll at the expiration of his or her probationary period if, within ten days prior thereto, the appointing authority has notified the county personnel officer in writing that the services of the employee have been unsatisfactory;

(8) For temporary or seasonal appointments of limited terms of not to exceed one year;

(9) For part-time appointment in which the employee accrues benefits of full-time employment on a basis proportional to the time worked;

(10) For emergency employment for not more than thirty days with or without examination with the consent of the county personnel officer and department head;

(11) For provisional employment without competitive examination when there is no appropriate eligible list available. Provisional employment shall not continue longer than six months and successive provisional appointments shall not be allowed;

(12) For transfer from a position in one department to a similar position in another department involving similar qualifications, duties, responsibilities, and salary ranges;

(13) For layoff by reason of lack of funds or work, abolition of the position, or material change in duties or organization, for the layoff of nontenured employees first, and for reemployment of permanent employees so laid off, giving consideration in both layoff and reemployment to performance record and seniority in service;

(14) For establishment of a plan for resolving employee grievances and complaints;

(15) For holidays, for attendance regulations in the various classes of positions in the classified service, and for annual, sick, and special leaves of absence, with or without pay or at reduced pay;

(16) For the development of employee morale, safety, and training programs;

(17) For a procedure whereby an appointing authority may suspend, reduce, demote, or dismiss an employee for misconduct, inefficiency, incompetence, insubordination, malfeasance, or other unfitness to render effective service and for the investigation and public hearing of appeals of such suspended, reduced, demoted, or dismissed employee;

(18) For granting of leave without pay to a permanent employee to accept a position in the unclassified service and for his or her return to a position comparable to that formerly held in the classified service at the conclusion of such service;

(19) For regulation covering political activity of employees in the classified service; and

(20) For other rules and regulations not inconsistent with sections 23-2534 to 23-2544 and the implementation of personnel policy in the county.

Source: Laws 1994, LB 212, § 8.

23-2542 Federal law; compliance.

Whenever federal Hatch Act provisions are applicable to programs, action shall be taken to assure that all personnel practices in those programs are in accordance with federal regulations. Those practices found not to be in compliance with such regulations shall not be implemented in those programs.

Source: Laws 1994, LB 212, § 9.

23-2543 Abolishment or termination of provisions.

The county board of a county which creates a personnel policy board may, by a two-thirds majority, vote to abolish such board, terminate the position of the personnel officer, and revoke all rules and regulations.

Source: Laws 1994, LB 212, § 10.

23-2544 Violations; penalty.

Any person who willfully violates sections 23-2534 to 23-2544 or the rules and regulations adopted pursuant to sections 23-2534 to 23-2544 shall be guilty of a Class II misdemeanor.

Source: Laws 1994, LB 212, § 11.

ARTICLE 26

PUBLIC BUILDING COMMISSION

Section
23-2601. Transferred to section 13-1301.
23-2602. Transferred to section 13-1302.
23-2603. Transferred to section 13-1303.
23-2604. Transferred to section 13-1304.
23-2605. Transferred to section 13-1305.
23-2606. Transferred to section 13-1306.
23-2607. Transferred to section 13-1307.
23-2608. Transferred to section 13-1308.

23-2601 Transferred to section 13-1301.

23-2602 Transferred to section 13-1302.

23-2603 Transferred to section 13-1303.

23-2604 Transferred to section 13-1304.

23-2605 Transferred to section 13-1305.

23-2606 Transferred to section 13-1306.

23-2607 Transferred to section 13-1307.

23-2608 Transferred to section 13-1308.

23-2609 Transferred to section 13-1309.

23-2610 Transferred to section 13-1310.

23-2611 Transferred to section 13-1311.

23-2612 Transferred to section 13-1312.

ARTICLE 27

LOCAL GOVERNMENTS REVENUE SHARING

23-2701 Transferred to section 13-601.

23-2702 Transferred to section 13-602.

23-2703 Transferred to section 13-603.

ARTICLE 28

COUNTY CORRECTIONS

Cross References

Jails, see Chapter 47.

Section
23-2808. Repealed. Laws 1979, LB 396, § 8.
23-2809. County board of corrections; contracts authorized.
23-2810. Transferred to section 47-501.
23-2811. Transferred to section 47-502.

23-2801 Declaration of intent.

It has been the declared policy of the State of Nebraska in the exercise of its police powers to foster and promote local control of local affairs. Highest ranking in this hierarchy of local matters is the supervision of law enforcement. The state provides a system of law enforcement and local officers to carry out the functions thereof on a day-to-day basis within such system. When shifting populations and modern day trends make particular divisions of responsibilities obsolete, it is incumbent on the Legislature to remedy such a situation when it arises on the county level. It is in the interest of the people of the State of Nebraska that the Legislature establish a new structure of responsibility over the county jails and correctional facilities in certain heavily populated counties and give other counties the discretion whether or not to employ such structure. Such a structure would enable county boards to constitute themselves as county boards of corrections while the sheriffs of such counties would be released to pursue more fully their primary duties as law enforcement officers.

Source: Laws 1974, LB 782, § 1; Laws 1979, LB 396, § 2; Laws 1984, LB 394, § 2.

23-2802 County board of corrections; created; powers and duties.

In each county having a population of one hundred fifty thousand or more inhabitants, the county board shall also serve as the county board of corrections and in counties of less than one hundred fifty thousand inhabitants the county board may choose to serve as the county board of corrections. Any such county board of corrections shall have charge of the county jail and correctional facilities and of all persons by law confined in such jail or correctional facilities. Such county board of corrections shall comply with any rule prescribed by the Jail Standards Board pursuant to sections 47-101 to 47-104.

Source: Laws 1974, LB 782, § 2; Laws 1979, LB 396, § 3; Laws 1984, LB 394, § 3; Laws 1996, LB 233, § 1.

Cross References

Implement sentence reduction provision, see section 47-501.

23-2803 County board of corrections; meetings; functions; dissolution; procedure.

A county board which, by a majority vote of its members, elects to serve as the county board of corrections shall meet as the county board of corrections within sixty days after such election and shall meet at least once every sixty days thereafter. Such board of corrections shall hear arguments and make recommendations for the maintenance, supervision, control, and direction of the county jail and correctional facilities.

A county board which, by a majority vote of its members, elects to serve as the county board of corrections may elect to dissolve the county board of corrections by a majority vote of its members. Such election to dissolve the county board of corrections shall be made at least sixty days before the

beginning of the fiscal year in which the sheriff would resume responsibility for the jail.

Source: Laws 1974, LB 782, § 3; Laws 1979, LB 396, § 4; Laws 1984, LB 394, § 4.

23-2804 County board of corrections; functions, duties, and responsibilities; how performed.

Each county board of corrections shall carry out the functions, duties, and responsibilities as provided in Chapter 47, article 1.

Source: Laws 1974, LB 782, § 4.

23-2805 Division of corrections; established; administrative officer; qualifications.

To aid the county board of corrections in accomplishing the purposes of sections 23-1723 and 23-2801 to 23-2806, there is hereby established the division of corrections under the jurisdiction of the board. The administrative officer of the division shall be the director of corrections, who shall be qualified by education, training, and experience to perform the duties of such position.

Source: Laws 1974, LB 782, § 5; Laws 1979, LB 396, § 5; Laws 1984, LB 394, § 5.

23-2806 Employment rights of employee of sheriff's office.

No person in the employ of the office of the sheriff shall be reduced in rank or pay, suspended, removed, or deprived of any benefits accrued as of July 10, 1984, except as provided in the rules of the merit commission.

Source: Laws 1974, LB 782, § 7; Laws 1979, LB 396, § 6; Laws 1984, LB 394, § 6.

23-2807 Repealed. Laws 1979, LB 396, § 8.

23-2808 Repealed. Laws 1979, LB 396, § 8.

23-2809 County board of corrections; contracts authorized.

The county board of corrections may, pursuant to the Interlocal Cooperation Act or Joint Public Agency Act, contract with any governmental unit for the purposes of implementing and complying with this section and sections 23-1703, 23-2801 to 23-2803, 23-2805, and 23-2806 and may contract with any individual, firm, partnership, limited liability company, or corporation to provide goods or services essential to the operation and maintenance of the county jail.

Source: Laws 1979, LB 396, § 7; Laws 1984, LB 394, § 7; Laws 1993, LB 121, § 163; Laws 1999, LB 87, § 66.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

23-2810 Transferred to section 47-501.

23-2811 Transferred to section 47-502.

ARTICLE 29
COUNTY COMMUNITY BUILDINGS

Section

23-2901 Legislative intent.

The Legislature finds that it is in the public interest to encourage maintenance of community buildings and grounds for the housing of various community enterprises and activities and for social, athletic, and recreational purposes and that different methods of accomplishing this should be made available in order to meet the desires and needs of different areas of the state.

Source: Laws 1977, LB 29, § 1.

23-2902 Site acquisition; purpose.

Any county in the State of Nebraska is hereby authorized to acquire a site or sites for and to equip a county community building or buildings for housing county enterprises and community activities and for social, athletic, and recreational purposes.

Source: Laws 1977, LB 29, § 2.

23-2903 Building; use; rules and regulations; agreements; funds.

The county board of any county may (1) make such rules and regulations as may be appropriate with respect to the use of any such building, including fees and charges for such use, (2) enter into agreements with any city, village, or school district in such county with respect to the use, maintenance, and support of any such building, and (3) use any available funds including federal revenue-sharing funds to aid in the equipping of any such building.

Source: Laws 1977, LB 29, § 3.

23-2904 Community building district; establish; purpose.

A majority of the resident taxpayers in any compact and contiguous district, territory, neighborhood, or community in the State of Nebraska, which is equivalent in area to one township or more, is hereby authorized to form, organize, and establish a community building district which shall be empow-

ered to equip and maintain a community building or buildings for the purposes set forth in section 23-2901 when the organization thereof is completed.

Source: Laws 1977, LB 29, § 4.

23-2905 District; petition; requirements.

Whenever a majority of the resident taxpayers of any such district, territory, neighborhood, or community intends or desires to form, organize, and establish a community building district which will be empowered to acquire and maintain a community building or buildings for the purposes set forth in section 23-2901 when the organization thereof is completed, they shall signify such intention or desire by presenting to the county board of the county in which the greater portion of the land proposed to be included in such district is situated a petition setting forth the desires and intentions of such petitioners. Such petition may be in the form of two or more separate petitions which read substantially the same except for the different signatures and addresses thereon. Such petition shall contain the full names and post office addresses of the petitioners, a statement of the area in square miles, and the complete description of the boundaries of the real properties to be embraced in the proposed district. When such proposed district includes any municipality, the petitions must be signed by a majority of the resident taxpayers within such municipality and by a majority of the resident taxpayers outside such municipality and within the boundaries of the proposed district.

Source: Laws 1977, LB 29, § 5.

23-2906 District; petition; hearing; notice.

Upon receipt of such petition, the county board shall examine it to determine whether it complies with the requirements of section 23-2905. Upon finding that such petition complies with such requirements, the county board shall set a hearing thereon and cause notice thereof to be published at least three successive weeks in a newspaper of general circulation throughout the area to be included in the proposed district. Such notice shall contain a statement of the information contained in such petition and of the date, time, and place at which the hearing shall be held and that at such hearing proposals may be submitted for the exclusion of land from or the inclusion of additional land in the proposed district. If the proposed district lies in two or more counties, the hearing shall be held before the combined boards of all counties interested and the time and place thereof shall be as mutually agreed by such boards.

Source: Laws 1977, LB 29, § 6.

23-2907 District; boundaries; election.

After completion of the hearing required by section 23-2906, the county board, if it determines that formation of the proposed district would promote public health, convenience, or welfare, shall propose such changes in the boundaries of such proposed district or of the areas into which such proposed district is to be divided as it shall deem proper. The county board shall call a special election for the purpose of approval of the formation of such district and the boundaries thereof by a majority of the qualified electors of the area affected by such district, or may submit the question of approval to be voted upon at any primary or general election.

Source: Laws 1977, LB 29, § 7.

23-2908 District; voter approval; board of trustees; how appointed; officers.

If the voters approve the formation and boundaries of the district, permanent organization shall be effected by the appointment by the county board of a board of trustees consisting of five residents of the district if the district includes territory in five townships or less. If the district embraces or includes territory in more than five townships, each township shall be represented on the board of trustees by one trustee who shall be a resident of the township. All trustees shall be appointed for two years and hold office until their successors have been appointed, except at the first appointment at least two trustees shall be appointed for one-year terms. The board of trustees shall organize by electing a president, vice president, and secretary-treasurer from the members of the board for a term of one year. All officers shall serve without pay.

Source: Laws 1977, LB 29, § 8.

23-2909 Board of trustees; budget statement; tax; levied; warrants.

The board of trustees shall annually fix the amount of money for the proposed budget statement as may be deemed sufficient and necessary for carrying out the proposed policy in regard to the contemplated building or buildings for the ensuing fiscal year. After the adoption of the district's budget statement, the president and secretary shall certify the amount to be received from taxation, according to the adopted budget statement, to the proper county clerk or county clerks and the proper county board or boards which may levy a tax subject to section 77-3443, not to exceed the amount so certified nor to exceed one and seven-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such district, for the acquisition or maintenance of the building or buildings in the district for the fiscal year as provided by law. Such tax shall be collected as other taxes are collected in the county by the county treasurer, shall be placed to the credit of the district so authorizing the same, and shall be paid to the treasurer of the district upon warrants drawn upon the fund by the board of trustees of the district. Such warrants shall bear the signature of the president and the countersignature of the secretary of the district. The amount of the tax levy shall not exceed the amount of funds required to defray the expenses of the district for a period of one year as set forth in the adopted budget statement.

Source: Laws 1977, LB 29, § 9; Laws 1979, LB 187, § 257; Laws 1992, LB 719A, § 109; Laws 1996, LB 1114, § 47.

23-2910 District; bylaws.

The board of trustees of the district may adopt such bylaws as may be deemed necessary for the government of the district.

Source: Laws 1977, LB 29, § 10.

23-2911 District; unpaid warrants; interest; rate.

All warrants for the payment of any indebtedness of such a district, which are unpaid for want of funds, shall bear interest, not to exceed six percent per annum, from the date of the registering of such unpaid warrants with the district treasurer. The amount of such warrants shall not exceed the revenue provided for the year in which the indebtedness was incurred.

Source: Laws 1977, LB 29, § 11.

23-2912 District; territory; added or withdrawn; procedure.

Lands may be added to or withdrawn from such district in the manner provided for its formation, but no withdrawal may be allowed if the result thereof would be to reduce the remaining territory included in the district below the minimum area provided in section 23-2904.

Source: Laws 1977, LB 29, § 12.

23-2913 District; territory withdrawn; outstanding obligations; liability.

Any area withdrawn from a district shall be subject to assessment and be otherwise chargeable for the payment and discharge of all of the obligations outstanding at the time of the filing of the petition for the withdrawal of the area as fully as though the area had not been withdrawn. All provisions which could be used to compel the payment by a withdrawn area of its portion of the outstanding obligations had the withdrawal not occurred may be used to compel the payment on the part of the area of the portion of the outstanding obligations of the district for which it is liable.

Source: Laws 1977, LB 29, § 13.

23-2914 District; territory withdrawn; obligations; when not liable.

An area withdrawn from a district shall not be subject to assessment or otherwise chargeable for any obligation of any nature or kind incurred after the withdrawal of the area.

Source: Laws 1977, LB 29, § 14.

23-2915 District; dissolution; procedure.

Any district subject to the provisions of sections 23-2904 to 23-2915 which has no outstanding indebtedness may be dissolved in the manner provided for formation of such districts. When such dissolution is ordered, any remaining funds of the district shall be transferred to the counties in which the district is situated in the same proportion as the area of the district in each county bears to the total area of the district, and such funds shall be deposited in the general fund of the respective counties.

Source: Laws 1977, LB 29, § 15.

ARTICLE 30
POLITICAL ACTIVITIES

Section
23-3001. Transferred to section 20-160.

23-3001 Transferred to section 20-160.

ARTICLE 31
COUNTY PURCHASING

Section
23-3101. Act, how cited.
23-3102. Purpose of act.
23-3103. Legislative intent.
23-3104. Terms, defined.
23-3105. Purchasing agent; compensation; bond.

Section

23-3101 Act, how cited.

Sections 23-3101 to 23-3115 shall be known and may be cited as the County Purchasing Act.

Source: Laws 1985, LB 393, § 1; Laws 1988, LB 828, § 3.

23-3102 Purpose of act.

The purpose of the County Purchasing Act is to provide a uniform purchasing procedure for county purchases of equipment, supplies, other items of personal property, and services and to provide for county sales of surplus personal property which is obsolete or not usable by the county.

Source: Laws 1985, LB 393, § 2; Laws 1988, LB 828, § 4.

23-3103 Legislative intent.

The Legislature encourages counties to work together under the provisions of the County Purchasing Act when joint purchases would be to the best advantage of such counties.

Source: Laws 1985, LB 393, § 3.

23-3104 Terms, defined.

As used in the County Purchasing Act, unless the context otherwise requires:

(1) Mobile equipment shall mean all vehicles propelled by any power other than muscular, including, but not limited to, motor vehicles, off-road designed vehicles, motorcycles, passenger cars, self-propelled mobile homes, truck-tractors, trucks, cabin trailers, semitrailers, trailers, utility trailers, and road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors;

(2) Personal property shall include, but not be limited to, supplies, materials, and equipment used by or furnished to any county officer, office, department, institution, board, or other agency of the county government. Personal property shall not include election ballots;

(3) Services shall mean any and all services except telephone, telegraph, postal, and electric light and power service, other similar services, and election contractual services; and

(4) Purchasing or purchase shall mean the obtaining of personal property or services by sale, lease, or other contractual means. Purchase shall also include contracting with sheltered workshops for products or services as provided in Chapter 48, article 15.

Source: Laws 1943, c. 57, § 5, p. 228; R.S.1943, § 23-324.03; R.S.1943, (1983), § 23-324.03; Laws 1985, LB 393, § 4; Laws 1988, LB 602, § 1; Laws 1988, LB 828, § 5; Laws 2003, LB 41, § 1.

23-3105 Purchasing agent; compensation; bond.

The governing board of a county with a population of more than one hundred fifty thousand shall and the governing board of any other county may employ a purchasing agent who shall not be a county officer of the county. All purchases made from appropriated funds of the county shall be made through the purchasing agent. The county board shall pay the agent for such services as shall be agreed upon at the time of employment. The person so employed and designated shall serve at the pleasure of the county board and give bond to the county in such amount as the county board shall prescribe.

Source: Laws 1943, c. 57, § 3, p. 227; R.S.1943, § 23-324.01; Laws 1974, LB 1007, § 2; R.S.1943, (1983), § 23-324.01; Laws 1985, LB 393, § 5; Laws 1988, LB 602, § 2.

23-3106 Purchasing agent or county board; powers; election supplies.

The purchasing agent, under the supervision of the county board, or the county board, if there is no purchasing agent, shall purchase all personal property and services required by any office, officer, department, or agency of the county government in the county, subject to the County Purchasing Act. The purchasing agent or the county board, if there is no purchasing agent, shall draw up and enforce standard specifications which shall apply to all personal property purchased for the use of the county government, shall have charge of all central storerooms operated or established by the county board, and shall transfer personal property to or between the several county offices, officers, and departments. All purchases of election ballots and election contractual services shall be made by the election commissioner or by the county clerk in counties without an election commissioner.

Source: Laws 1943, c. 57, § 4, p. 228; R.S.1943, § 23-324.02; R.S.1943, (1983), § 23-324.02; Laws 1985, LB 393, § 6; Laws 1988, LB 602, § 3; Laws 1988, LB 828, § 6.

23-3107 County board or purchasing agent; administrative duties.

The county board or purchasing agent, subject to the approval of the county board, shall: (1) Prescribe the manner in which personal property shall be purchased, delivered, and distributed; (2) prescribe dates for making estimates, the future period which they are to cover, the form in which they are submitted, and the manner of their authentication; (3) revise forms from time to time as conditions warrant; (4) provide for the transfer to and between county departments and agencies of personal property which is surplus with one department or agency but which may be needed by another or others; (5) dispose of by sale personal property which has been declared by the county board to be surplus and which is obsolete or not usable by the county. Such property with a value of less than two thousand five hundred dollars may be sold without competitive

bidding. Property with a value of two thousand five hundred dollars or more shall be sold through competitive bidding; (6) prescribe the amount of cash deposit or bond to be submitted with a bid on a contract and the amount of deposit or bond to be given for the performance of a contract, if the amount of the bond is not specifically provided by law; and (7) prescribe the manner in which claims for personal property or services delivered to any department or agency of the county shall be submitted, approved, and paid.

Source: Laws 1943, c. 57, § 6, p. 228; R.S.1943, § 23-324.04; R.S.1943, (1983), § 23-324.04; Laws 1985, LB 393, § 7; Laws 1988, LB 828, § 7; Laws 2003, LB 41, § 2.

23-3108 Purchases; how made.

(1) Except as provided in section 23-3109, purchases of personal property or services by the county board or purchasing agent shall be made:

(a) Through the competitive sealed bidding process prescribed in section 23-3111 if the estimated value of the purchase is twenty thousand dollars or more;

(b) By securing and recording at least three informal bids, if practicable, if the estimated value of the purchase is equal to or exceeds five thousand dollars, but is less than twenty thousand dollars; or

(c) By purchasing in the open market if the estimated value of the purchase is less than five thousand dollars, subject to section 23-3112. In any county having a population of less than one hundred thousand inhabitants and in which the county board has not appointed a purchasing agent pursuant to section 23-3105, all elected officials are hereby authorized to make purchases with an estimated value less than five thousand dollars.

(2) In no case shall a purchase made pursuant to subdivision (1)(a), (b), or (c) of this section be divided to produce several purchases which are of an estimated value below that established in the relevant subdivision.

(3) All contracts and leases shall be approved as to form by the county attorney, and a copy of each long-term contract or lease shall be filed with the county clerk.

Source: Laws 1985, LB 393, § 8; Laws 1987, LB 55, § 1; Laws 2003, LB 41, § 3.

23-3109 Competitive bidding; when not required; waiver of bidding requirements; when.

(1) Competitive bidding shall not be required (a) when purchasing unique or noncompetitive items, (b) when purchasing petroleum products, (c) when obtaining professional services or equipment maintenance, or (d) when the price has been established by one of the following: (i) The federal General Services Administration; (ii) the materiel division of the Department of Administrative Services; or (iii) a cooperative purchasing agreement by which supplies, equipment, or services are procured in accordance with a contract established by another governmental entity or group of governmental entities if the contract was established in accordance with the laws and regulations applicable to the establishing governmental entity or, if a group, the lead governmental entity.

(2) The county board may, by majority vote of its members, waive the bidding requirements of the County Purchasing Act if such waiver is necessary to meet an emergency which threatens serious loss of life, health, or property in the county.

(3) The governing board may waive the bidding requirements of the County Purchasing Act if the county can save a significant amount of money by entering into a special purchase. The county board shall, five days prior to such special purchase, publish notice of its intention to make such a special purchase, stating the items considered and inviting informal quotes. A two-thirds vote of the entire county board shall approve such special purchase.

Source: Laws 1985, LB 393, § 9; Laws 2003, LB 41, § 4.

23-3110 Competitive bidding; considerations.

In awarding the bid, the following elements shall be given consideration when applicable:

(1) The price;

(2) The ability, capacity, and skill of the supplier to perform;

(3) The character, integrity, reputation, judgment, experience, and efficiency of the supplier;

(4) The quality of previous performance;

(5) Whether the supplier can perform within the time specified;

(6) The previous and existing compliance of the supplier with laws relating to the purchase or contract;

(7) The life-cost of the personal property or service in relation to the purchase price and the specific use;

(8) The performance of the personal property or service taking into consideration any commonly accepted tests and standards of product or service usability and user requirements;

(9) The energy efficiency ratio as stated by the supplier;

(10) The life-cycle costs between alternatives for all classes of equipment, the evidence of expected life, the repair and maintenance costs, and the energy consumption on a per year basis; and

(11) Such other information as may be secured having a bearing on the decision.

Source: Laws 1985, LB 393, § 10.

23-3111 Competitive bidding; procedure.

When competitive sealed bidding is required by section 23-3108:

(1) Sealed bids shall be solicited by public notice in a legal newspaper of general circulation in the county at least once a week for two consecutive weeks before the final date of submitting bids;

(2) In addition to subdivision (1) of this section, sealed bids may also be solicited by sending requests by mail to prospective suppliers and by posting notice on a public bulletin board;

(3) The notice shall contain: (a) A general description of the proposed purchase; (b) an invitation for sealed bids; (c) the name of the county official in

charge of receiving the bids; (d) the date, time, and place the bids received shall be opened; and (e) whether alternative items will be considered;

(4) All bids shall remain sealed until opened on the published date and time by the county board or its designated agent;

(5) Any or all bids may be rejected and the bid need not be awarded at the time of opening, but may be held over for further consideration;

(6) If all bids received on a pending contract are for the same unit price or total amount and appear to be so as the result of collusion between the bidders, the county board or purchasing agent shall have authority to reject all bids and to purchase the personal property or services in the open market, except that the price paid in the open market shall not exceed the bid price;

(7) Each bid, with the name of bidder, shall be entered on a record and each record, with the successful bidder indicated thereon, shall, after the award or contract, be open to public inspection; and

(8) All lettings on such bids shall be public and shall be conducted as provided in Chapter 73, article 1.

Source: Laws 1985, LB 393, § 11.

23-3112 Insufficient funds; compliance with budget; wrongful purchase, effect.

Except in an emergency, which the county board shall declare by resolution, no order for delivery on a contract on open market order for personal property or services for any county department or agency shall be awarded until the county clerk is satisfied that the unencumbered balance in the fund concerned, in excess of all unpaid obligations, is sufficient to defray the cost of such order or contract or the county clerk is satisfied that the purchase is one contemplated in the terms of the county budget as set up by the county board. Whenever any officer, office, department, or agency of the county government shall purchase or contract for any personal property or services contrary to the County Purchasing Act, such order or contract shall be void. The county officer or the head of such department or agency shall be personally liable for the costs of such order or contract and, if already paid for out of county funds, the amount may be recovered in the name of the county in an appropriate action.

Source: Laws 1943, c. 57, § 8, p. 230; R.S.1943, § 23-324.06; R.S.1943, (1983), § 23-324.06; Laws 1985, LB 393, § 12.

23-3113 Purchasing agent or staff; financial interest prohibited; penalty; county board; limitation.

(1) Neither the county purchasing agent nor any member of his or her office staff, if any, shall be financially interested in or have any personal beneficial interest, either directly or indirectly, in any contract or purchase order for any personal property or services used by or furnished to any office, officer, department, or agency of the county government, nor shall such purchasing agent or a member of his or her staff, if any, receive directly or indirectly, from any person, firm, or corporation to which any contract or purchase order may be awarded, by rebate, gift, or otherwise, any money, anything of value whatsoever, or any promise, obligation, or contract for future reward or compensation. Any county purchasing agent or any member of his or her office staff, if any, who violates any of the provisions of the County Purchasing Act

shall, upon conviction thereof, be guilty of a Class IV felony. All contracts or agreements in violation of this section are declared unlawful and shall be wholly void as an obligation against the county.

(2) If there is no purchasing agent, the county board acting pursuant to the County Purchasing Act shall be subject to section 49-14,103.01.

Source: Laws 1943, c. 57, § 9, p. 230; R.S.1943, § 23-324.07; Laws 1983, LB 370, § 15; R.S.1943, (1983), § 23-324.07; Laws 1985, LB 393, § 13; Laws 1986, LB 548, § 10.

23-3114 Equipment; lease; contract.

The county board, in addition to other powers granted it by law, may enter into contracts for lease of real or personal property for authorized purposes. Such leases shall not be restricted to a single year and may provide for the purchase of the property in installment payments. This section shall be in addition to and notwithstanding the provisions of sections 23-132 and 23-916.

Source: Laws 1967, c. 115, § 1, p. 363; R.S.1943, (1983), § 23-324.08; Laws 1985, LB 393, § 14.

23-3115 Surplus personal property; sale; conditions.

(1) The county board or the purchasing agent, with the approval of the county board, may authorize a county official or employee to sell surplus personal property which is obsolete or not usable by the county, other than mobile equipment, having a value of less than five hundred dollars. In making such authorization, the county board or purchasing agent may place any restriction on the type or value of property to be sold, restrict such authority to a single transaction or to a period of time, or make any other appropriate restrictions or conditions.

(2) Any county official or employee granted the authority to sell surplus personal property which is obsolete or not usable by the county as prescribed in subsection (1) of this section shall make a written report to the county board within thirty days after the end of the fiscal year reflecting, for each transaction, the item sold, the name and address of the purchaser, the price paid by the purchaser for each item, and the total amount paid by the purchaser.

(3) The money generated by any sales authorized by this section shall be payable to the county treasurer and shall be credited to the funds of the department, office, or agency to which the property belonged.

(4) No person authorized by the county board or purchasing agent to make such sales shall be authorized to make or imply any warranty of any kind whatsoever as to the nature, use, condition, or fitness for a particular purpose of any property sold pursuant to this section. Any person making sales authorized by this section shall inform the purchaser that such property is being sold as is without any warranty of any kind whatsoever.

Source: Laws 1988, LB 828, § 2.

ARTICLE 32
COUNTY ASSESSOR

Cross References

Constitutional provisions:
Election, when held, see Article XVII, section 4, Constitution of Nebraska.

Legislature, provide for election, see Article IX, section 4, Constitution of Nebraska.
Term begins, see Article XVII, section 5, Constitution of Nebraska.
Certification, see sections 77-421 and 77-422.
Elected, when, see section 32-519.
Property Tax Administrator, obey instructions of, see section 77-1311.
Taxation of property, general powers and duties, see Chapter 77.
Vacancy:
How filled, see section 32-567.
Possession and control of office by deputy, see section 32-563.

Section

23-3201 County assessor; elected; when; duties; county assessor, defined; additional salary for county clerk.

Except as provided in section 22-417, (1) each county having a population of more than three thousand five hundred inhabitants and having more than one thousand two hundred tax returns in any tax year shall have an elected county assessor and (2) each other county shall have an elected county assessor or shall have the county clerk serve as county assessor as determined by the registered voters of the county in accordance with section 32-519.

The county assessor shall work full time and his or her office shall be separate from that of the county clerk except in counties which do not elect a full-time assessor.

For purposes of sections 23-3201 to 23-3210, county assessor shall mean a county assessor or a county clerk who is the ex officio county assessor. For the performance of the duties as county assessor, the county clerk shall receive such additional salary as may be fixed by the county board.

Source: Laws 1959, c. 85, § 1, p. 391; Laws 1961, c. 146, § 7, p. 428; R.S.1943, (1988), § 32-310.01; Laws 1990, LB 821, § 16; Laws 1992, LB 1063, § 19; Laws 1992, Second Spec. Sess., LB 1, § 19; Laws 1994, LB 76, § 544; Laws 1996, LB 1085, § 36.

Cross References

Assessment duties, performance by Property Tax Administrator, see section 77-1340.
Election and term, see section 32-519.

23-3202 County assessor or deputy; county assessor certificate; required; exception.

No person, except the Property Tax Administrator performing the assessment function pursuant to section 77-1340, shall be eligible to file for, be appointed to, or hold the office of county assessor or serve as deputy assessor in any

county of this state unless he or she holds a county assessor certificate issued pursuant to section 77-422.

Source: Laws 1969, c. 623, § 3, p. 2521; Laws 1983, LB 245, § 2; R.S.1943, (1986), § 77-423; Laws 1990, LB 821, § 17; Laws 1999, LB 194, § 3; Laws 2000, LB 968, § 14; Laws 2006, LB 808, § 22.

The right of a person elected county assessor to assume office may be tested in quo waranto, mandamus, or injunction even though no election contest is filed. Shear v. County Board of Commissioners, 187 Neb. 849, 195 N.W.2d 151 (1972).

23-3203 County clerk acting as ex officio county assessor; county assessor certificate; required.

No person shall be eligible to file for, assume, or be appointed to the office of county clerk acting as ex officio county assessor unless he or she holds a county assessor certificate issued pursuant to section 77-422.

Source: Laws 1969, c. 622, § 13, p. 2517; R.S.1943, (1981), § 77-1337; Laws 1986, LB 817, § 10; Laws 1987, LB 508, § 13; R.S.Supp.,1988, § 77-429; Laws 1990, LB 821, § 18.

23-3204 County assessor; residence requirements.

A county assessor need not be a resident of the county when he or she files for election as county assessor, but a county assessor shall reside in a county for which he or she holds office.

Source: Laws 1969, c. 623, § 6, p. 2522; R.S.1943, (1986), § 77-426; Laws 1990, LB 821, § 19; Laws 1996, LB 1085, § 37.

23-3205 County assessor; oath; bond.

The county assessor, before entering upon the duties of the office, shall take and subscribe an oath to perform well, faithfully, and impartially such duties and shall execute a bond as required by Chapter 11, article 1.

Source: Laws 1903, c. 73, § 21, p. 393; R.S.1913, § 6307; Laws 1921, c. 133, art. IV, § 1, p. 551; C.S.1929, § 77-401; R.S.1943, § 77-401; Laws 1969, c. 52, § 2, p. 352; Laws 1987, LB 508, § 7; R.S.Supp.,1988, § 77-401; Laws 1990, LB 821, § 20.

Cross References

For form of oath, see section 11-101.
For other provisions relating to bond, see Chapter 11, article 1.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

23-3206 County assessor in counties over 200,000 population; deputies.

In counties having a population of over two hundred thousand, the county assessor shall have two chief deputies, a chief field deputy and a chief office deputy.

Source: Laws 1903, c. 73, § 22, p. 392; Laws 1905, c. 110, § 1, p. 509; Laws 1909, c. 111, § 1, p. 436; Laws 1913, c. 87, § 1, p. 229; R.S.1913, § 2451; Laws 1917, c. 46, § 1, p. 129; Laws 1919, c. 61, § 1, p. 168; C.S.1922, § 2390; C.S.1929, § 33-129; Laws 1931, c. 69, § 1, p. 188; Laws 1941, c. 65, § 1, p. 289;

C.S.Supp.,1941, § 33-129; Laws 1943, c. 90, § 21, p. 307; R.S. 1943, § 33-129; Laws 1957, c. 133, § 1, p. 449; R.S.1943, (1988), § 33-129; Laws 1989, LB 5, § 6; R.S.Supp.,1989, § 77-401.02; Laws 1990, LB 821, § 21.

23-3207 Administration of oaths.

County assessors and their deputies may administer oaths within their respective counties in matters pertaining to their official duties.

Source: Laws 1990, LB 821, § 22.

Cross References

Fees for taking acknowledgments, oaths, and affirmations, disposition, see section 33-153.

23-3208 Repealed. Laws 1994, LB 76, § 615.

23-3209 Neglect of duty; damages.

Any county assessor, elected or appointed, who willfully neglects or refuses in whole or in part to perform the duties required by law in the assessment of property for taxation shall be answerable in damages to a political subdivision or any person thereby injured up to the limits of his or her official bond.

Source: Laws 1903, c. 73, § 27, p. 393; R.S.1913, § 6312; Laws 1921, c. 133, art. IV, § 6, p. 552; C.S.1922, § 5838; C.S.1929, § 77-406; R.S.1943, § 77-408; Laws 1947, c. 250, § 10, p. 791; Laws 1969, c. 650, § 1, p. 2567; Laws 1977, LB 39, § 211; Laws 1987, LB 508, § 8; R.S.Supp.,1988, § 77-408; Laws 1990, LB 821, § 24; Laws 2006, LB 808, § 23.

23-3210 Assessor's bond; action to recover upon; by whom brought.

The state, any municipality, or any person aggrieved or injured by the willful neglect of duty by the county assessor or any deputy or assistant assessor may recover upon the officer's bond the amount lost to the state, municipality, or person on account of such neglect of the county assessor or deputy or assistant assessor, together with the costs of suit.

Source: Laws 1903, c. 73, § 21, p. 393; R.S.1913, § 6307; Laws 1921, c. 133, art. IV, § 1, p. 551; C.S.1929, § 77-401; R.S.1943, § 77-403; Laws 1951, c. 260, § 2, p. 886; R.S.1943, (1986), § 77-403; Laws 1990, LB 821, § 25.

ARTICLE 33

COUNTY SCHOOL ADMINISTRATOR

Section
23-3301. Repealed. Laws 1999, LB 272, § 118.
23-3302. County school administrator; contract authorized.
23-3303. Repealed. Laws 1999, LB 272, § 118.
23-3304. Repealed. Laws 1999, LB 272, § 118.
23-3305. Repealed. Laws 1999, LB 272, § 118.
23-3306. Repealed. Laws 1999, LB 272, § 118.
23-3307. Repealed. Laws 1999, LB 272, § 118.
23-3308. Repealed. Laws 1999, LB 272, § 118.
23-3309. Repealed. Laws 1994, LB 76, § 615.
23-3310. Repealed. Laws 1999, LB 272, § 118.
23-3311. County school administrator; mileage.

Section
23-3312. County superintendent; elimination of office; county clerk; duties.
23-3313. Repealed. Laws 1999, LB 272, § 118.

23-3301 Repealed. Laws 1999, LB 272, § 118.

23-3302 County school administrator; contract authorized.

The county board of any county may contract with the educational service unit of which it is a part, with a Class II, III, IV, V, or VI school district, or with an individual who holds a Nebraska certificate to administer, to be a county school administrator for Class I school districts in the county and to perform other designated county educational activities. Any contract entered into under this section shall not exceed a period of one year. The county school administrator, with the approval of the county board, shall have the authority to employ such other persons as may be necessary to assist the county school administrator in the performance of his or her duties.

Source: Laws 1973, LB 402, § 2; Laws 1979, LB 187, § 220; R.S.1943, (1987), § 79-320.01; Laws 1990, LB 821, § 27; Laws 1992, LB 719A, § 110; Laws 1997, LB 806, § 1; Laws 1999, LB 272, § 12; Laws 2003, LB 685, § 1.

23-3303 Repealed. Laws 1999, LB 272, § 118.

23-3304 Repealed. Laws 1999, LB 272, § 118.

23-3305 Repealed. Laws 1999, LB 272, § 118.

23-3306 Repealed. Laws 1999, LB 272, § 118.

23-3307 Repealed. Laws 1999, LB 272, § 118.

23-3308 Repealed. Laws 1999, LB 272, § 118.

23-3309 Repealed. Laws 1994, LB 76, § 615.

23-3310 Repealed. Laws 1999, LB 272, § 118.

23-3311 County school administrator; mileage.

When it is necessary for the county school administrator to travel on business of the county, he or she shall be allowed mileage at the rate allowed by the provisions of section 81-1176 for each mile actually and necessarily traveled by the most direct route if the trip or trips are made by automobile, but if travel by rail or bus is economical and practical, he or she shall be allowed only the actual cost of rail or bus transportation upon the presentation of the bill for the same accompanied by a proper voucher to the county board of his or her county in like manner as is provided for as to all other claims against the county.

Source: Laws 1953, c. 58, § 2, p. 196; Laws 1957, c. 70, § 8, p. 301; Laws 1971, LB 292, § 4; R.S.1943, (1987), § 79-320; Laws 1990, LB 821, § 36; Laws 1996, LB 1011, § 15; Laws 1999, LB 272, § 13.

23-3312 County superintendent; elimination of office; county clerk; duties.

The office of county superintendent of schools shall be eliminated on June 30, 2000. The records of the office of county superintendent of schools shall be transferred to and maintained by the county clerk in each county.

Source: Laws 1997, LB 806, § 63; Laws 1999, LB 272, § 14.

23-3313 Repealed. Laws 1999, LB 272, § 118.

ARTICLE 34
PUBLIC DEFENDER

Cross References

Constitutional provisions:
Election, when held, see Article XVII, section 4, Constitution of Nebraska.
Legislature, provide for election, see Article IX, section 4, Constitution of Nebraska.
Term begins, see Article XVII, section 5, Constitution of Nebraska.
Appointed counsel for indigent defendants, see sections 29-3901 to 29-3908.
Elected, when, see section 32-523.
Judicial district public defender, see sections 29-3909 to 29-3918.
Vacancy:
How filled, see section 32-567.
Possession and control of office by deputy, see section 32-563.

Section

23-3401 Public defender in certain counties; election; qualifications; prohibited practices; residency.

(1) There is hereby created the office of public defender in counties that have or that attain a population in excess of one hundred thousand inhabitants and in other counties upon approval by the county board. The public defender shall be elected as provided in the Election Act.

(2) The public defender shall be a lawyer licensed to practice law in this state. He or she shall take office after election and qualification at the same time that other county officers take office, except that upon the creation of such office in any county, a qualified person may be appointed by the county board to serve as public defender until such office can be filled by an election in accordance with section 32-523.

(3) In counties having a population of more than one hundred seventy thousand inhabitants, the public defender shall devote his or her full time to the legal work of the office of the public defender and shall not engage in the private practice of law. All assistant public defenders in such counties shall devote their full time to the legal work of such office of the public defender and shall not engage in the private practice of law so long as each assistant public defender receives the same annual salary as each deputy county attorney of comparable ability and experience receives in such counties.

(4) No public defender or assistant public defender shall solicit or accept any fee for representing a criminal defendant in a prosecution in which the public defender or assistant is already acting as the defendant's court-appointed counsel.

(5) A public defender elected after November 1986 need not be a resident of the county when he or she files for election as public defender, but a public defender shall reside in a county for which he or she holds office, except that in counties with a population of one hundred thousand or less inhabitants, the public defender shall not be required to reside in the county in which he or she holds office.

Source: Laws 1915, c. 165, § 1, p. 336; Laws 1917, c. 150, § 1, p. 335; Laws 1919, c. 58, § 1, p. 162; C.S.1922, § 10105; C.S.1929, § 29-1803; Laws 1931, c. 65, § 6, p. 179; C.S.Supp.,1941, § 29-1803; Laws 1943, c. 90, § 15, p. 303; R.S.1943, § 29-1804; Laws 1947, c. 62, § 10, p. 203; Laws 1957, c. 107, § 7, p. 382; Laws 1961, c. 134, § 1, p. 387; Laws 1965, c. 151, § 4, p. 495; Laws 1967, c. 605, § 5, p. 2050; Laws 1967, c. 178, § 1, p. 495; Laws 1969, c. 238, § 1, p. 878; Laws 1972, LB 1463, § 1; Laws 1984, LB 189, § 1; Laws 1986, LB 812, § 8; Laws 1989, LB 627, § 1; R.S.1943, (1989), § 29-1804; Laws 1990, LB 822, § 1; Laws 1991, LB 343, § 1; Laws 1994, LB 76, § 546; Laws 1996, LB 1085, § 38.

Cross References

Election Act, see section 32-101.

23-3402 Public defender; duties; appointment; prohibitions.

(1) It shall be the duty of the public defender to represent all indigent felony defendants within the county he or she serves. The public defender shall represent indigent felony defendants at all critical stages of felony proceedings against them through the stage of sentencing. Sentencing shall include hearings on charges of violation of felony probation. Following the sentencing of any indigent defendant represented by him or her, the public defender may take any direct, collateral, or postconviction appeals to state or federal courts which he or she considers to be meritorious and in the interest of justice and shall file a notice of appeal and proceed with one direct appeal to either the Court of Appeals or the Supreme Court of Nebraska upon a timely request after sentencing from any such convicted felony defendant, subject to the public defender's right to apply to the court to withdraw from representation in any appeal which he or she deems to be wholly frivolous.

(2) It shall be the duty of the public defender to represent all indigent persons against whom a petition has been filed with a mental health board as provided in sections 71-945 to 71-947.

(3) It shall be the duty of the public defender to represent all indigent persons charged with misdemeanor offenses punishable by imprisonment when appointed by the court.

(4) Appointment of a public defender shall be by the court in accordance with sections 29-3902 and 29-3903. A public defender shall not represent an indigent person prior to appointment by the court, except that a public defender may represent a person under arrest for investigation or on suspicion. A public defender shall not inquire into a defendant's financial condition for purposes of

indigency determination except to make an initial determination of indigency of a person under arrest for investigation or on suspicion. A public defender shall not make a determination of a defendant's indigency, except an initial determination of indigency of a person under arrest for investigation or on suspicion, nor recommend to a court that a defendant be determined or not determined as indigent.

(5) For purposes of this section, the definitions found in section 29-3901 shall be used.

Source: Laws 1972, LB 1463, § 2; Laws 1975, LB 285, § 1; Laws 1984, LB 189, § 2; R.S.1943, (1989), § 29-1804.03; Laws 1990, LB 822, § 2; Laws 1991, LB 732, § 27; Laws 1991, LB 830, § 28; Laws 2004, LB 1083, § 85.

A public defender is not attorney for a defendant until appointed to represent him in the particular case by a judge. State v. Russell, 194 Neb. 64, 230 N.W.2d 196 (1975).

A public defender may apply to the court to withdraw from appeal when he deems such appeal to be frivolous. State v. Kellogg, 189 Neb. 692, 204 N.W.2d 567 (1973).

23-3403 Public defender; assistants; personnel; compensation; office space, fixtures, and supplies.

The public defender may appoint as many assistant public defenders, who shall be attorneys licensed to practice law in this state, secretaries, law clerks, investigators, and other employees as are reasonably necessary to permit him or her to effectively and competently represent the clients of the office subject to the approval and consent of the county board which shall fix the compensation of all such persons as well as the budget for office space, furniture, furnishings, fixtures, supplies, law books, court costs, and brief-printing, investigative, expert, travel, and other miscellaneous expenses reasonably necessary to enable the public defender to effectively and competently represent the clients of the office.

Source: Laws 1972, LB 1463, § 10; R.S.1943, (1989), § 29-1804.11; Laws 1990, LB 822, § 3.

This section shifts the authority to set salaries for the public defender's office to the county board. Hall Cty. Pub. Defenders Organization v. County of Hall, 253 Neb. 763, 571 N.W.2d 789 (1998); State ex rel. Garvey v. County Bd. of Comm. of Sarpy County, 253 Neb. 694, 573 N.W.2d 747 (1998).

The county board has the authority to set salaries for the public defender's office. State ex rel. Garvey v. County Bd. of Comm. of Sarpy County, 253 Neb. 694, 573 N.W.2d 747 (1998).

23-3404 Public defender; certain counties; appointment authorized.

(1) In a county having a population of less than thirty-five thousand inhabitants which does not have an elected public defender, the county board of such county may appoint a qualified attorney to serve as public defender for such county. In making the appointment and negotiating the contract, the county board shall comply with sections 23-3405 to 23-3408.

(2) Nothing in sections 23-3401 to 23-3403 or 29-3901 to 29-3908 shall be construed to apply to sections 23-3404 to 23-3408.

Source: Laws 1986, LB 885, § 1; R.S.1943, (1989), § 29-1824; Laws 1990, LB 822, § 4.

23-3405 Public defender; policy board created; members; duties.

(1) Prior to making the appointment and negotiating the contract provided for in section 23-3404, the county board of such county shall appoint a policy board which shall ensure the independence of the contracting attorney and

provide the county board with expertise and support in such matters as criminal defense functions, determination of salary levels, determination of reasonable caseload standards, response to community and client concerns, and implementation of the contract. The policy board shall consist of three members. Two of the members shall be practicing attorneys, and one member shall be a layperson. The policy board shall not include judges, prosecutors, or law enforcement officials.

(2) The policy board shall: (a) Receive applications from all attorneys who wish to be a public defender; (b) screen the applications to insure compliance with sections 23-3404 to 23-3408; (c) forward the names of any qualified applicants to the county board which shall make the appointments from the list of qualified candidates; (d) recommend to the county board the level of compensation that the public defender should receive and further recommend any contract provisions consistent with such sections; and (e) monitor compliance with such sections, including any continuing legal education requirements.

Source: Laws 1986, LB 885, § 2; R.S.1943, (1989), § 29-1825; Laws 1990, LB 822, § 5.

23-3406 Public defender; contract; terms.

(1) The contract negotiated between the county board and the contracting attorney shall specify the categories of cases in which the contracting attorney is to provide services.

(2) The contract negotiated between the county board and the contracting attorney shall be awarded for at least a two-year term. Removal of the contracting attorney short of the agreed term may be for good cause only.

(3) The contract between the county board and the contracting attorney may specify a maximum allowable caseload for each full-time or part-time attorney who handles cases under the contract. Caseloads shall allow each lawyer to give every client the time and effort necessary to provide effective representation.

(4) The contract between the county board and the contracting attorney shall provide that the contracting attorney be compensated at a minimum rate which reflects the following factors:

(a) The customary compensation in the community for similar services rendered by a privately retained counsel to a paying client or by government or other publicly paid attorneys to a public client;

(b) The time and labor required to be spent by the attorney; and

(c) The degree of professional ability, skill, and experience called for and exercised in the performance of the services.

(5) The contract between the county board and the contracting attorney shall provide that the contracting attorney may decline to represent clients with no reduction in compensation if the contracting attorney is assigned more cases which require an extraordinary amount of time and preparation than the contracting attorney can competently handle.

(6) The contract between the contracting attorney and the county board shall provide that the contracting attorney shall receive at least ten hours of continuing legal education annually in the area of criminal law. The contract between the county board and the contracting attorney shall provide funds for the

continuing legal education of the contracting attorney in the area of criminal law.

(7) The contract between the county board and the contracting attorney shall require that the contracting attorney provide legal counsel to all clients in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association and the Canons of Ethics for Attorneys in the State of Nebraska. The contract between the county board and the contracting attorney shall provide that the contracting attorney shall be available to eligible defendants upon their request, or the request of someone acting on their behalf, at any time the Constitution of the United States or the Constitution of Nebraska requires the appointment of counsel.

(8) The contract between the county board and the contracting attorney shall provide for reasonable compensation over and above the normal contract price for cases which require an extraordinary amount of time and preparation, including capital cases.

Source: Laws 1986, LB 885, § 3; R.S.1943, (1989), § 29-1826; Laws 1990, LB 822, § 6.

23-3407 Public defender; contracting attorney; qualifications; experts; support staff; fees.

(1) The contracting attorney shall have been a practicing attorney for at least two years prior to entering into the contract with the county board, shall be a member in good standing of the Nebraska State Bar Association at the time the contract is executed, and shall have past training or experience in criminal law.

(2) The contracting attorney shall apply to the court which is hearing the case for fees to employ social workers, mental health professionals, forensic experts, investigators, and other support staff to perform tasks for which such support staff and experts possess special skills and which do not require legal credentials or experience. The court which is hearing the case shall allow reasonable fees for such experts and support staff, and the fees shall be paid by the county board. The contract between the county board and the contracting attorney shall not specify any sums of money for such experts or support staff.

Source: Laws 1986, LB 885, § 4; R.S.1943, (1989), § 29-1827; Laws 1990, LB 822, § 7.

23-3408 Public defender; second attorney authorized; when; fees.

In the event that the contracting attorney is appointed to represent an individual charged with a Class I or Class IA felony, the contracting attorney shall immediately apply to the district court for appointment of a second attorney to assist in the case. Upon application from the contracting attorney, the district court shall appoint another attorney with substantial felony trial experience to assist the contracting attorney in the case. Application for fees for the attorney appointed by the district court shall be made to the district court judge who shall allow reasonable fees. Once approved by the court, such fees shall be paid by the county board.

Source: Laws 1986, LB 885, § 5; R.S.1943, (1989), § 29-1828; Laws 1990, LB 822, § 8.

ARTICLE 35
MEDICAL AND MULTIUNIT FACILITIES

Cross References

Hospital Sinking Fund Act, see section 15-235.05.

(a) GENERAL PROVISIONS

(b) HOSPITAL DISTRICTS

(c) HOSPITAL AUTHORITIES

Section

(a) GENERAL PROVISIONS

23-3501 Medical and multiunit facilities; authorized; bonds; election; signatures required.

The county board in any county in this state having thirty-six hundred inhabitants or more or in which the taxable value of the taxable property is twenty-eight million six hundred thousand dollars or more may issue and sell bonds of such county in such an amount as the county board may deem advisable for the construction or acquisition of an indigent hospital, a home for aged or infirm persons, a county community hospital, a mental health clinic, a

clinic or facility to combat mental retardation, a public health center, a medical complex, multiunit housing, or a similar facility required to protect the health and welfare of the people and to purchase suitable equipment for the same. Such bonds shall bear interest at a rate set by the county board.

No bonds shall be issued until the question of the issuance of the bonds has been submitted to the voters of such county at a general election or a special election called for such purpose. The issuance of such bonds shall be approved by a majority vote of the electors voting on such proposition at any such election. Such election may be called either by resolution of the county board or upon a petition submitted to the county board calling for an election. Such petition shall be signed by the legal voters of the county equal in number to ten percent of the number of votes cast in the county for the office of Governor at the last general election.

Source: Laws 1917, c. 170, § 1, p. 381; C.S.1922, § 1054; C.S.1929, § 26-748; Laws 1937, c. 54, § 1, p. 220; C.S.Supp.,1941, § 26-748; R.S.1943, § 23-343; Laws 1945, c. 44, § 1, p. 208; Laws 1957, c. 64, § 1, p. 284; Laws 1959, c. 82, § 1, p. 372; Laws 1963, c. 114, § 1, p. 447; Laws 1967, c. 121, § 1, p. 386; Laws 1969, c. 51, § 82, p. 326; Laws 1972, LB 1168, § 1; Laws 1979, LB 187, § 102; R.S.1943, (1987), § 23-343; Laws 1992, LB 1063, § 20; Laws 1992, LB 1240, § 20; Laws 1992, Second Spec. Sess., LB 1, § 20.

Lack of public notification of special county board meeting to call election upon initiative petition under this section did not invalidate resulting election. Shadbolt v. County of Cherry, 185 Neb. 208, 174 N.W.2d 733 (1970).

County board is permitted to issue and sell bonds for construction and acquisition of a county community hospital. Armstrong v. Board of Supervisors of Kearney County, 153 Neb. 858, 46 N.W.2d 602 (1951).

23-3502 Board of trustees; membership; vacancy.

(1)(a) When a county with a population of three thousand six hundred or more and less than two hundred thousand inhabitants or with a taxable value of the taxable property of twenty-eight million six hundred thousand dollars or more establishes a facility or facilities as provided by section 23-3501, the county board of the county shall proceed at once to appoint a board of trustees. Such board shall consist of three, five, or seven members as fixed by the county board. All members of the board shall be residents of such county.

(b) When the board is first established, one member shall be appointed for a term of two years, one for four years, and one for six years from the date they are appointed if the county board provides for a three-member board.

If the county board provides for a five-member board, one additional member shall be appointed for four years and one for six years. When the board is changed to a five-member board, the three members who are serving as such trustees at the time of a change from a three-member to a five-member board shall each complete his or her respective term of office. The two additional members shall be appointed by the county board, one for a term of four years and one for a term of six years. Thereafter, as their terms expire, members shall be appointed for terms of six years.

If the county board provides for a seven-member board, one additional member shall be appointed for two years and one for four years. When the board is changed to a seven-member board, the three or five members who are serving as such trustees at the time of the change shall each complete his or her respective term of office. The two or four additional members shall be appoint-

ed by the county board. If two additional members are appointed, one shall be appointed for four years and one for six years. If four additional members are appointed, one shall be appointed for two years, two for four years, and one for six years.

(2) In any county having a population of more than three hundred thousand inhabitants, a minimum of one member of the board of trustees shall be a resident of the county and shall reside outside the corporate limits of the city in which such facility or facilities are located. In any county having a population of more than three hundred thousand inhabitants, if only one member of the board of trustees resides outside the corporate limits of the city in which the facility or facilities are located and the residence of the member is annexed by the city, he or she shall be allowed to complete his or her term of office but shall not be eligible for reappointment. The trustees shall, within ten days after their appointment, qualify by taking the oath of county officers and by furnishing a bond in an amount to be fixed by the county board. They shall organize as a board of trustees by the election of one of their number as chairperson, one as secretary, and one as treasurer, except that in counties with two hundred thousand inhabitants or more, the county treasurer of the county in which such facility or facilities are located shall be the treasurer of the board of trustees. The treasurer shall receive and pay out all the money under the control of such board as ordered by it and shall report such expenditures and receipts to the county board on a monthly basis and as required by section 23-3507. The monthly report shall include a statement of the amount of currently outstanding registered warrants.

(3)(a) When a member or trustee is absent from three consecutive board meetings either regular or special without being excused by the remaining members of the board, his or her office shall become vacant and a new member shall be appointed by the county board to fill the vacancy for the unexpired term of such member pursuant to subdivision (3)(b) of this section. Such vacancy shall become effective when the county board finds that there is such a vacancy or fills the same as provided in this subsection.

(b) Any member of such board may at any time be removed from office by the county board. Vacancies shall be filled in substantially the same manner as the original appointments are made. The person appointed to fill such a vacancy shall hold office for the unexpired term.

(4) In counties having a population of two hundred thousand inhabitants or more, the county board of the county having such facility or facilities, in lieu of appointing a board of trustees of such facility or facilities, may elect to serve as the board of trustees of such facility or facilities. If the county board makes such election, the county board shall assume all the duties and responsibilities of the board of trustees of the institution. Such election shall be evidenced by the adoption of a resolution by the county board.

Source: Laws 1945, c. 44, § 2, p. 208; Laws 1953, c. 53, § 1, p. 185; Laws 1957, c. 64, § 2, p. 284; Laws 1963, c. 113, § 3, p. 443; Laws 1963, c. 114, § 2, p. 447; Laws 1967, c. 121, § 2, p. 386; Laws 1974, LB 293, § 1; Laws 1977, LB 481, § 1; Laws 1979, LB 187, § 103; Laws 1980, LB 685, § 1; Laws 1981, LB 260, § 1; Laws 1982, LB 703, § 1; Laws 1987, LB 134, § 1; Laws 1991, LB 122,

§ 1; R.S.Supp.,1991, § 23-343.01; Laws 1992, LB 1063, § 21; Laws 1992, Second Spec. Sess., LB 1, § 21; Laws 1999, LB 212, § 1; Laws 2002, LB 1062, § 1.

23-3503 Board of trustees; compensation; mileage.

The salary of the members of the board of trustees of such facility or facilities as provided by section 23-3501 shall be fixed by an order of the county board of such county. The county board may establish a salary in an amount not less than one hundred dollars per year but not more than one hundred dollars per meeting of the board of trustees and not to exceed one thousand two hundred dollars per year. The members shall also be reimbursed for necessary mileage at the rate provided in section 81-1176 while on business of the facility or facilities.

Source: Laws 1945, c. 44, § 3, p. 209; Laws 1963, c. 114, § 3, p. 449; Laws 1967, c. 121, § 3, p. 387; Laws 1978, LB 719, § 1; Laws 1981, LB 204, § 22; Laws 1989, LB 135, § 1; R.S.Supp.,1990, § 23-343.02; Laws 1996, LB 1011, § 16.

23-3504 Board of trustees; bylaws, rules, and regulations, adopt; facility funds; improvements and equipment; control; powers.

The board of trustees of such facility as provided by section 23-3501 shall make, adopt, and file with the county board such bylaws, rules, and regulations for its guidance and for the government of such facility as may be deemed expedient for the economical and equitable conduct of the facility. The board of trustees shall have the exclusive control of the expenditures of all money collected to the credit of the fund for such facility. After the original construction of such facility, the board of trustees shall have exclusive control over any and all improvements or additions thereto and equipment, including the authority to contract, subject to ratification by the county board, for any improvements or additions thereto and equipment. No such improvement, addition, or equipment shall cost more than fifty percent of the current replacement cost of such existing facility and equipment unless the proposition is submitted to the voters of such county at a general election or a special election called for such purpose and approved by a vote of the majority of the electors voting on the proposition at such election. The board of trustees shall also have exclusive control, supervision, care, and custody of the grounds, rooms, and buildings purchased, constructed, leased, or set apart for such purposes. The board of trustees shall have power to pay all current bills, claims, and salaries of all employees of such facility by an order upon its treasurer, signed by the superintendent of such facility and countersigned by the chairperson and secretary of the board of trustees. Facsimile signatures of the superintendent and board members may be used to sign such orders. The board of trustees shall have power to lease such facility and equipment to a charitable nonprofit organization upon such terms and conditions as may be agreed, but no such facility or equipment shall be leased unless authorized by the voters of such county at a general election or a special election called for such purpose and approved by a majority vote of the electors voting on such proposition at any such election. The board of trustees shall also have the following powers: (1) To expend hospital operating funds for the reimbursement of the reasonable expenses of persons interviewed or retained for employment or medical staff appointment; and (2) all powers and authority granted to the boards of

nonprofit corporations under the Nebraska Nonprofit Corporation Act, except to the extent that those powers are inconsistent with the Hospital Authorities Act, the Nebraska Local Hospital District Act, and sections 23-3501 to 23-3527 or are specifically prohibited by law.

Source: Laws 1945, c. 44, § 4, p. 209; Laws 1949, c. 38, § 1, p. 130; Laws 1951, c. 50, § 1, p. 168; Laws 1963, c. 114, § 4, p. 449; Laws 1965, c. 102, § 1, p. 424; Laws 1967, c. 121, § 4, p. 388; Laws 1981, LB 171, § 2; Laws 1981, LB 260, § 2; Laws 1991, LB 798, § 1; R.S.Supp.,1991, § 23-343.03; Laws 1995, LB 366, § 2; Laws 1996, LB 681, § 193.

Cross References

Hospital Authorities Act, see section 23-3579.
Nebraska Local Hospital District Act, see section 23-3528.
Nebraska Nonprofit Corporation Act, see section 21-1901.

Cost of improvements or additions is limited to fifty percent of original cost. Armstrong v. Board of Supervisors of Kearney County, 153 Neb. 858, 46 N.W.2d 602 (1951).

23-3505 Board of trustees; officials and assistants; appoint; compensation.

The board of trustees of such facility or facilities as provided by section 23-3501 shall have power to appoint, remove, and fix the compensation of a suitable administrator, superintendent or matron, or two or more of such officials, and necessary assistants and in general carry out the spirit and intent of sections 23-3501 to 23-3509 in establishing and maintaining such facility or facilities.

Source: Laws 1945, c. 44, § 5, p. 210; Laws 1963, c. 114, § 5, p. 450; Laws 1967, c. 121, § 5, p. 389; Laws 1987, LB 134, § 2; R.S. 1943, (1987), § 23-343.04.

23-3506 Board of trustees; accept gifts and devises; carry out conditions.

The board of trustees of such facility or facilities as provided by section 23-3501 shall have power to accept gifts, devises, and bequests of real and personal property to carry out the purposes for which such board was established and, to the extent of the powers conferred upon such board by sections 23-3501 to 23-3509, to execute and carry out such conditions as may be annexed to any gift, devise, or bequest.

Source: Laws 1945, c. 44, § 6, p. 210; Laws 1963, c. 114, § 6, p. 450; Laws 1967, c. 121, § 6, p. 389; Laws 1987, LB 134, § 3; R.S. 1943, (1987), § 23-343.05.

23-3507 Board of trustees; meetings; reports; certify amount for ensuing year.

The board of trustees of such facility as provided by section 23-3501 shall hold meetings at least once each month. It shall keep a complete record of all of its proceedings. One of the trustees shall visit and examine such facility at least twice each month. The board of trustees shall, on or before July 15 of each year, (1) file with the county board a report of its proceedings with reference to such facility and a statement of all receipts and expenditures during the year

and (2) certify the amount necessary to maintain and improve such facility for the ensuing year.

Source: Laws 1945, c. 44, § 7, p. 210; Laws 1963, c. 114, § 7, p. 451; Laws 1967, c. 121, § 7, p. 389; R.S.1943, (1987), § 23-343.06; Laws 1995, LB 366, § 3; Laws 1996, LB 1085, § 39.

23-3508 County board; bonds; elections; purpose; terms; levy; limitation.

(1) The county board in counties in this state in which such facility or facilities have been established as provided in section 23-3501 may, by a majority vote of the board, issue and sell bonds of the county in such sums as the county board may deem advisable to defray the cost of improvements or additions thereto and equipment. Such bonds shall not exceed the amount authorized for improvements, additions, or equipment in section 23-3504.

(2) The county board may also, either on its own initiative or upon the recommendation of the board of trustees, from time to time submit to the electors of such county at a general election or at a special election called for that purpose the question of the issuance of the bonds of such county to defray the cost of improvements or additions to such facility or facilities or equipment therefor in an amount either within or exceeding the limitation of fifty percent of the current replacement cost of such existing facility or facilities and equipment. If approved by the vote of a majority of the electors voting on such proposition, the county board shall issue and sell such bonds. The county board, if it deems it best, may combine in one question to the voters the proposition of authorizing such improvements, additions, or equipment in excess of the limitation prescribed, as provided in section 23-3504, and the issuance of bonds under this section.

(3) Such bonds shall (a) be payable in not to exceed twenty years from the date of issuance, (b) bear interest payable annually or semiannually, and (c) contain an option to the county to pay all or any part thereof at any time after five years from the date of issuance. When such bonds have been issued under this section or section 23-3501, the county board shall cause to be levied and collected annually a tax upon all of the taxable property of such county sufficient to pay the interest and principal of the bonds as the same become due and payable.

(4) In addition to the issuance of bonds therefor, the county board may also place operating income from the operation of such facility which is not needed for current operations into a special reserve fund to be used to defray the cost of such improvements or additions and equipment. Income placed in such fund may be withdrawn and used for operating expenses with the approval of the county board.

Source: Laws 1945, c. 44, § 8, p. 210; Laws 1949, c. 38, § 2, p. 131; Laws 1963, c. 114, § 8, p. 451; Laws 1967, c. 121, § 8, p. 390; Laws 1969, c. 157, § 1, p. 729; Laws 1969, c. 51, § 83, p. 327; Laws 1978, LB 560, § 1; Laws 1991, LB 798, § 2; R.S.Supp.,1991, § 23-343.07.

Two alternative methods of defraying the cost of improvements or additions are provided. Armstrong v. Board of Supervisors of Kearney County, 153 Neb. 858, 46 N.W.2d 602 (1951).

23-3509 County board; tax levy; amount.

The county board may annually levy a tax upon all of the taxable property within the county sufficient to defray the amount required for such maintenance and improvement as certified to it by the board of trustees.

Source: Laws 1945, c. 44, § 9, p. 211; R.S.1943, (1987), § 23-343.08; Laws 1992, LB 719A, § 111; Laws 1996, LB 1085, § 40.

23-3510 Acquisition by aid of gifts or devises; authorization; powers of county board; conditions.

Counties having thirty-six hundred inhabitants or more are hereby authorized and empowered to (1) accept a gift or devise of or to purchase a building suitable for conversion into such facility or facilities as provided by section 23-3501, (2) purchase real estate and erect a building or buildings thereon for such facility or facilities, and (3) maintain, manage, improve, remodel, equip and operate such facility or facilities. The county board of any county may, in its discretion, accept a gift or devise of a specific sum of money for the purposes above set forth in this section, and by tax levy raise such additional sum of money as may be necessary to remodel, build or acquire such facility or facilities, and support and maintain the same. Before any such gift or devise may be accepted, the same must be approved by the county board, and the total value of all gifts and devises accepted and approved for the original construction or acquisition of such facility or facilities must equal at least fifty percent of the cost of such construction or acquisition before any tax levy can be made for the purposes provided in this section.

Source: Laws 1947, c. 61, § 1, p. 196; Laws 1963, c. 114, § 10, p. 453; Laws 1967, c. 121, § 10, p. 391; R.S.1943, (1987), § 23-343.10.

23-3511 Tax levy; limitation; purpose; management.

The county board shall have power to levy a tax each year of not to exceed three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such county for the purpose of acquiring, remodeling, improving, equipping, maintaining, and operating such facility or facilities as provided by section 23-3501. In counties having a population of not more than seven thousand persons, such tax shall not exceed seven cents on each one hundred dollars of the taxable value. The county board shall by resolution determine and declare how the facility or facilities shall be managed.

Source: Laws 1947, c. 61, § 2, p. 196; Laws 1953, c. 287, § 44, p. 957; Laws 1963, c. 114, § 11, p. 453; Laws 1967, c. 121, § 11, p. 392; Laws 1973, LB 20, § 1; Laws 1979, LB 187, § 104; Laws 1991, LB 798, § 3; R.S.Supp.,1991, § 23-343.11; Laws 1992, LB 719A, § 112; Laws 1996, LB 1085, § 41; Laws 1996, LB 1114, § 48.

23-3512 Sections, how construed.

The provisions of sections 23-3510 to 23-3512 are intended to be cumulative to and not amendatory of sections 23-3501 to 23-3509.

Source: Laws 1947, c. 61, § 3, p. 196; Laws 1987, LB 134, § 4; R.S.1943, (1987), § 23-343.12.

23-3513 Cities and villages; gifts of money or property to aid county in acquisition, construction, or maintenance; issuance of bonds; procedure.

(1) Any city or village may make a gift of money or property, including equipment, to the county in which such city or village is situated to aid and assist in the acquisition, construction, or maintenance of such facility or facilities as provided by section 23-3501, to a nonprofit corporation which will provide or is providing hospital facilities within such city or village, or to a hospital district established pursuant to section 23-3529 and in which such city or village is located. Any such gift shall be approved by three-fourths of all the members elected to the city council of the city or board of trustees of the village making such gift. In order to enable any such city or village to make such gift of money to such county, the city or village shall be empowered and authorized to borrow money, pledge the property and credit of the city or village, and issue its bonds to obtain money therefor in an amount not to exceed three and one-half percent of the taxable valuation of such city or village. No such bonds shall be issued until after the bonds have been authorized by a majority vote of the electors voting on the proposition of their issuance at a general municipal election or at a special election called for the submission of such proposition.

(2) Such bonds shall be payable in not to exceed twenty years from date and shall bear interest payable annually or semiannually. Notice of the time and place of the election shall be given by publication three successive weeks prior thereto in some legal newspaper printed in and of general circulation in such city or village or, if no newspaper is printed in such city or village, in a newspaper of general circulation in such city or village. No such election shall be called except upon a three-fourths vote of all the members elected to the city council of the city or board of trustees of the village, which three-fourths vote of the city council or board of trustees shall constitute the approval provided for in either subsection (1) or (2) of this section, and either the city council or village board shall be required to make such gift, in the event the electors vote such bonds.

Source: Laws 1947, c. 41, § 2, p. 157; Laws 1957, c. 65, § 1, p. 288; Laws 1963, c. 114, § 12, p. 454; Laws 1967, c. 121, § 12, p. 392; Laws 1969, c. 51, § 84, p. 328; Laws 1971, LB 80, § 1; Laws 1971, LB 534, § 26; Laws 1972, LB 1124, § 1; Laws 1979, LB 187, § 105; R.S.1943, (1987), § 23-343.13; Laws 1992, LB 719A, § 113.

23-3514 Claims; payment by warrant; registration; interest.

All claims against such facility or facilities as provided by section 23-3501, may be paid by warrants, duly drawn on the treasurer of such facility or facilities, signed by the superintendent, and countersigned by the chairperson and secretary of the board of trustees. When such warrants have been issued and delivered, they may be presented to the treasurer of such facility or facilities, and, if such be the fact, endorsed not paid for want of funds. Such warrants shall be registered by the treasurer of such facility or facilities in the order of presentation. They shall draw interest from the date of registration at a rate fixed by the board of trustees at the time such warrants are issued and approved by the county board.

Source: Laws 1957, c. 66, § 1, p. 290; Laws 1963, c. 114, § 13, p. 455; Laws 1967, c. 121, § 13, p. 393; Laws 1974, LB 693, § 2; Laws 1982, LB 703, § 2; R.S.1943, (1987), § 23-343.14.

23-3515 Adjoining counties; issuance of joint bonds; election; majority required.

Any two or more adjoining counties having a combined population of thirty-six hundred inhabitants or more or having a combined taxable value of the taxable property of twenty-eight million six hundred thousand dollars or more may, upon resolution of the county board of each county, issue their joint bonds in the amount, for the purposes, and upon the conditions provided in section 23-3501. No bonds shall be issued until the question of their issuance has been submitted to the voters of each county at a general election or at a special election called for such purpose. The issuance of such bonds shall be approved by a majority vote of the electors voting on such question in each county, which election may be called either by resolution of the county boards or upon a petition submitted to the county boards calling for the same signed by the legal voters of each county equal in number to ten percent of the number of votes cast in each county for the office of Governor at the last general election.

Source: Laws 1957, c. 64, § 3, p. 286; Laws 1979, LB 187, § 106; R.S.1943, (1987), § 23-343.15; Laws 1992, LB 1063, § 22; Laws 1992, Second Spec. Sess., LB 1, § 22.

County in relation to hospital district remains basic unit. Shadbolt v. County of Cherry, 185 Neb. 208, 174 N.W.2d 733 (1970).

23-3516 Adjoining counties; board; membership; powers.

(1) Whenever two or more counties establish a facility or facilities as provided by section 23-3515, the county board of each such county shall proceed immediately to appoint three members to serve on the board of trustees of such facility or facilities. When such board is first established, each county board shall appoint one member for a term of two years, one for four years, and one for six years from the date they are appointed. Thereafter, as their terms expire, members shall be appointed for a term of six years.

(2) Whenever the board would consist of an even number of members, one additional member shall be appointed for a term of six years by the county board of the county having the greatest population as disclosed by the latest United States census.

(3) The board of trustees provided for in this section shall have the same powers, duties, obligations, and authority provided in sections 23-3502 to 23-3509.

Source: Laws 1957, c. 64, § 4, p. 286; Laws 1961, c. 88, § 2, p. 308; Laws 1963, c. 114, § 14, p. 455; Laws 1967, c. 121, § 14, p. 393; Laws 1987, LB 134, § 5; R.S.1943, (1987), § 23-343.16; Laws 1992, LB 1240, § 21.

23-3517 Adjoining counties; reports; county board actions; voter approval; construction of sections.

Sections 23-3501 to 23-3509 shall apply to any facility or facilities established pursuant to section 23-3515. For purposes of sections 23-3515 to 23-3519, whenever such sections: (1) Require the making of any report to the county board, such report shall be made to the county board of each county concerned; (2) authorize or require the taking of any action by the county board, such action shall be concurred in by the county board of each county con-

cerned; and (3) provide for the submission of any question to the voters before any action may be taken, such question shall be submitted to the voters of each county concerned and shall be approved by a majority vote of the electors voting on such question in each such county.

Source: Laws 1957, c. 64, § 5, p. 287; Laws 1963, c. 114, § 15, p. 456; Laws 1967, c. 121, § 15, p. 394; Laws 1987, LB 134, § 6; R.S.1943, (1987), § 23-343.17.

23-3518 Repealed. Laws 1992, LB 1240, § 24.

23-3519 Adjoining counties; certification of taxes; levy; limitation; disposition of proceeds.

The board of trustees of any such facility organized under section 23-3515 shall, each year, fix the amount of money for the proposed budget statement as may be deemed sufficient and necessary for the operation of such facility during the following calendar year. After the adoption of the budget statement and on or before July 15 of each year, the board of trustees of such facility shall certify to the county board of the county in which such facility is located the amount of the tax which may be levied under the facility's adopted budget statement to be received from taxation. Such county board may apportion such amount among the counties concerned in proportion to the taxable valuation of all taxable property and shall certify to each county its share of such amount.

Each county may levy a tax sufficient to raise the amount so certified to it, and the county treasurer shall transmit the proceeds of such tax to the treasurer of the county in which such facility is located for credit to the facility fund.

Source: Laws 1957, c. 64, § 7, p. 287; Laws 1963, c. 114, § 17, p. 456; Laws 1967, c. 121, § 16, p. 394; Laws 1969, c. 145, § 28, p. 689; Laws 1971, LB 9, § 1; Laws 1979, LB 187, § 107; Laws 1991, LB 798, § 4; R.S.Supp.,1991, § 23-343.19; Laws 1992, LB 719A, § 114; Laws 1992, LB 1240, § 22; Laws 1995, LB 366, § 4; Laws 1996, LB 1085, § 42; Laws 1996, LB 1114, § 49.

23-3520 Preexisting rights; intent of sections.

The provisions of sections 23-3520 to 23-3525 are not intended to limit any preexisting rights to charge and collect for services rendered prior to the passage of sections 23-3520 to 23-3525 had by hospitals which are created and existing under the general powers of counties of this state or under the provisions of sections 23-3501 to 23-3519 and 23-3528 to 23-3572.

Source: Laws 1971, LB 908, § 1; R.S.1943, (1987), § 23-343.68.

23-3521 Governing board; rates and fees; establish.

The governing board of each hospital which is existing and operating under the general powers granted to counties of this state or under the provisions of sections 23-3501 to 23-3519 and 23-3528 to 23-3572, shall establish rates and fees to be charged for care or services, or both care and services rendered to persons by its hospital.

Source: Laws 1971, LB 908, § 2; R.S.1943, (1987), § 23-343.69.

23-3522 Care and services; liability.

Persons to whom care and services have been rendered shall be liable for the cost and fees of such care and services to the appropriate county, counties or hospital district maintaining and operating the hospital providing such care and services. In cases where the person receiving the care and services is a minor child, the parents of such minor patient shall be liable jointly and severally for the costs and fees of such care and services to the appropriate county, counties or hospital district maintaining and operating the hospital providing such care and services. In cases where the person receiving such care and services is married, both the patient and the patient's spouse shall be jointly and severally liable for the cost and fees of such care and services to the appropriate county, counties or hospital district maintaining and operating the hospital providing such care and services. In cases where the person receiving such care and services is under guardianship, the guardian, to the extent of the value of the estate of the ward controlled by the guardian, shall be liable for the cost and fees of such care and services to the appropriate county, counties or hospital district maintaining and operating the hospital providing such care and services. Persons, not otherwise legally liable for the care of another, may enter into an agreement with such hospitals for the care of such person and having done so shall be liable to the hospital providing such care for the costs and fees of such care provided.

Source: Laws 1971, LB 908, § 3; R.S.1943, (1987), § 23-343.70.

23-3523 Care and services; action for recovery.

Suit to recover such costs and fees for such care and services shall be brought (1) in the name of the county maintaining and operating the hospital, (2) in the case of a county hospital maintained and operated by more than one county, in the name of the county in which the hospital facility, or any part of it, is located, and (3) in the case of a hospital maintained and operated by a hospital district, in the name of the hospital district.

Source: Laws 1971, LB 908, § 4; R.S.1943, (1987), § 23-343.71.

23-3524 Care and services; costs and fees; authority of board to compromise.

The governing board of any such hospital providing such care and services shall have the power to compromise and settle or completely write off the costs and fees for care and services rendered in or by its hospital on any case where the board, in its sole judgment, decides such action is advisable for any reason.

Source: Laws 1971, LB 908, § 5; R.S.1943, (1987), § 23-343.72.

23-3525 Care and services; costs and fees; collection; disposition.

Costs and fees collected for care and services rendered by a county hospital or a hospital district hospital shall be deposited in a fund for the exclusive use by the appropriate county or hospital district for the maintenance, operation and improvement of its hospital.

Source: Laws 1971, LB 908, § 6; R.S.1943, (1987), § 23-343.73.

23-3526 Retirement plan; authorized; reports.

(1) The board of trustees of each facility, as provided by section 23-3501, shall, upon approval of the county board, have the power and authority to establish and fund a retirement plan for the benefit of its full-time employees.

The plan may be funded by any actuarially recognized method approved by the county board. Employees participating in the plan may be required to contribute toward funding the benefits. The facility shall pay all costs of establishing and maintaining the plan. The plan may be integrated with old age and survivor's insurance.

(2)(a) Beginning December 31, 1998, and each December 31 thereafter, the chairperson of the board of trustees of a facility with a retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code shall file with the Public Employees Retirement Board an annual report on such plan and shall submit copies of such report to the members of the Nebraska Retirement Systems Committee of the Legislature. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

(i) The number of persons participating in the retirement plan;

(ii) The contribution rates of participants in the plan;

(iii) Plan assets and liabilities;

(iv) The names and positions of persons administering the plan;

(v) The names and positions of persons investing plan assets;

(vi) The form and nature of investments;

(vii) For each defined contribution plan which is not administered by a retirement system under the County Employees Retirement Act, a full description of investment policies and options available to plan participants; and

(viii) For each defined benefit plan which is not administered by a retirement system under the County Employees Retirement Act, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan which is not administered by a retirement system under the County Employees Retirement Act contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the board of trustees shall cause to be prepared a quadrennial report for each retirement plan which is not administered by a retirement system under the County Employees Retirement Act, and the chairperson shall file the same with the Public Employees Retirement Board and submit to the members of the Nebraska Retirement Systems Committee of the Legislature a copy of such report. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section which is not administered by a retirement system under the County Employees Retirement Act. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

Source: Laws 1977, LB 346, § 1; R.S.1943, (1987), § 23-343.121; Laws 1998, LB 1191, § 35; Laws 1999, LB 795, § 11.

Cross References

County Employees Retirement Act, see section 23-2331.

23-3527 Retirement system; option to discontinue participation under County Employees Retirement Act; future participation in a retirement system, option.

(1) A facility established under the provisions of section 23-3501, in a county which is presently participating in a retirement system under the County Employees Retirement Act pursuant to Chapter 23, article 23, shall be given the option to continue participation under such act or to discontinue such participation.

(2) A facility established under the provisions of section 23-3501, in a county which in the future shall elect to participate in a retirement system under the County Employees Retirement Act shall be given the option to participate in a retirement system pursuant to such act or to decline such participation.

Source: Laws 1977, LB 346, § 2; R.S.1943, (1987), § 23-343.122.

Cross References

County Employees Retirement Act, see section 23-2331.

(b) HOSPITAL DISTRICTS

23-3528 Act, how cited.

Sections 23-3528 to 23-3552 may be cited as the Nebraska Local Hospital District Act.

Source: Laws 1959, c. 83, § 28, p. 384; R.S.1943, (1987), § 23-343.47.

23-3529 Hospital districts; establish.

Whenever it shall be conducive to the public health and welfare, a local hospital district may be established in the manner and having the powers and duties provided in sections 23-3528 to 23-3552.

Source: Laws 1959, c. 83, § 1, p. 375; R.S.1943, (1987), § 23-343.20.

County board is given power to determine if proposed district will be conducive to public health and welfare. Syfie v. Tri-County Hospital Dist., 186 Neb. 478, 184 N.W.2d 398 (1971).

23-3530 Hospital districts; petition; contents; signatures required; valuation required.

Whenever the formation of a local hospital district is desired, a petition stating (1) the name of the proposed district, (2) the location of the hospital to be maintained by such proposed district, and (3) the territory to be included within it, which territory should be contiguous, may be presented to the county board of the county in which the land or a greater portion of the land in the proposed district is situated. Such petitions shall be signed by at least ten percent of the resident freeholders whose names appear on the current tax schedules in the office of the county assessor and who appear to reside within the suggested boundaries of the proposed district. The minimum taxable valuation of all taxable property within such proposed district shall be eight million six hundred thousand dollars. Parts of a voting precinct may be included in the proposed district.

Source: Laws 1959, c. 83, § 2, p. 375; Laws 1963, c. 115, § 1, p. 458; Laws 1965, c. 103, § 1, p. 426; Laws 1979, LB 187, § 108; R.S.1943, (1987), § 23-343.21; Laws 1992, LB 719A, § 115.

County board in which the land or greater portion of land in proposed district is appropriate tribunal to determine if lands have been properly included. Syfie v. Tri-County Hospital Dist., 186 Neb. 478, 184 N.W.2d 398 (1971).

Harm from fractionating territories of counties under this section insufficient to constitute violation of Article I, section 25, or Article VIII, section 1, Constitution of Nebraska. Shadbolt v. County of Cherry, 185 Neb. 208, 174 N.W.2d 733 (1970).

23-3531 Hospital districts; petition; hearing; notice; modification of boundaries.

Upon receipt of such petition, the county board shall examine it to determine whether it complies with the requirements of section 23-3530. Upon finding that such petition complies with such requirements, the county board shall set a hearing thereon and cause notice thereof to be published at least three successive weeks in a newspaper of general circulation throughout the area to be included in such proposed district. Such notice shall contain a statement of the information contained in such petition and of the date, time, and place at which such hearing shall be held and that at such hearing proposals may be submitted for the exclusion of land from, or the inclusion of additional land in such proposed district or for modification of the boundaries of the areas into which such district shall be divided for the purpose of election of members of the board of directors.

Source: Laws 1959, c. 83, § 3, p. 375; R.S.1943, (1987), § 23-343.22.

Notice is complete upon distribution of last issue of paper although three full weeks have not elapsed since first publication. Syfie v. Tri-County Hospital Dist., 186 Neb. 478, 184 N.W.2d 398 (1971).

23-3532 Hospital districts; hearing; changes in boundary; submission to electors.

After completion of the hearing required by section 23-3531, the county board shall order such changes in the boundaries of such proposed district or of the areas into which such proposed district is to be divided as it deems proper, but no such change shall reduce the total taxable valuation of all taxable property within such proposed district below eight million six hundred thousand dollars. The county board shall also order that the question of the formation of such district, as set forth in the petition and any changes therein ordered by the board, shall be submitted to the electors of such proposed district at a special election to be held for that purpose and shall set a date when such election shall be held at the usual voting place within each precinct. The county board shall certify such question to the county clerk or election commissioner who shall give notice of such election in the manner provided by law for the conduct of special elections.

Source: Laws 1959, c. 83, § 4, p. 376; Laws 1979, LB 187, § 109; R.S.1943, (1987), § 23-343.23; Laws 1992, LB 719A, § 116.

County board in which the land or greater portion of land in proposed district is the appropriate tribunal to determine if lands have been properly included. It cannot establish district until it shall be conducive to the public health and welfare. Syfie v. Tri-County Hospital Dist., 186 Neb. 478, 184 N.W.2d 398 (1971).

23-3533 Hospital district; election; canvass of votes; resolution; district body corporate; presumption.

The votes cast for and against the formation of such district shall be counted and canvassed in the manner provided by law and the results shall be certified to the county board. If the county board finds that a majority of the votes cast in the area of the proposed district favor the formation of such proposed district, it shall so declare by resolution entered on its records and forward a copy of such resolution to the county board of each county containing land

embraced within such proposed district, and the district shall thereupon be fully organized. The district shall be a body corporate and politic and may sue and be sued in its own name. Every such hospital district shall, in all cases, be conclusively presumed to have been legally organized six months after such resolution has been adopted by the county board unless an action attacking the validity of such organization is brought within such time.

Source: Laws 1959, c. 83, § 5, p. 376; Laws 1961, c. 88, § 3, p. 309; Laws 1963, c. 115, § 2, p. 458; Laws 1965, c. 103, § 2, p. 426; Laws 1967, c. 122, § 1, p. 396; R.S.1943, (1987), § 23-343.24.

Cross References

For canvass and return of votes, see Chapter 32, article 10.

23-3534 Board of directors; members; election; terms; vacancies.

The elective officers of a local hospital district shall be a board of directors consisting of five members. The members of the first board shall be appointed by the county board and shall be so appointed that two members shall serve terms ending on the first Tuesday in June following the first statewide primary election following the initial appointment, and three shall serve terms ending on the first Tuesday in June following the second statewide primary election following the initial appointment.

Members shall be elected as provided in section 32-550. All registered voters of this state who reside within the hospital district on or before the day of the election shall be entitled to vote in such hospital district election.

Any vacancy upon such board occurring other than by the expiration of a term shall be filled by appointment by the remaining members of the board of directors. Any person appointed to fill such vacancy shall serve for the remainder of the unexpired term. If there are vacancies in the offices of a majority of the members of the board, there shall be a special election conducted by the Secretary of State to fill such vacancies.

Source: Laws 1959, c. 83, § 6, p. 376; Laws 1963, c. 115, § 3, p. 458; Laws 1972, LB 661, § 15; Laws 1972, LB 1168, § 2; Laws 1973, LB 552, § 5; Laws 1989, LB 640, § 1; R.S.Supp.,1990, § 23-343.25; Laws 1994, LB 76, § 547.

23-3535 Hospital district; board of directors; meetings; officers; selection; expenses.

The board of directors shall meet on or before the second Monday after the completion of organization of the district and shall organize by the election of a chairperson, a vice-chairperson, and a secretary-treasurer. The members of such board shall serve without compensation, except that each shall be allowed his or her actual and necessary traveling and incidental expenses incurred in the performance of his or her official duties with reimbursement for mileage to be made at the rate provided in section 81-1176.

Source: Laws 1959, c. 83, § 7, p. 377; Laws 1981, LB 204, § 23; R.S.1943, (1987), § 23-343.26; Laws 1996, LB 1011, § 17.

23-3536 Hospital district; board of directors; meetings; quorum; rules and regulations.

The board of directors shall provide for the time and place of holding its regular meetings and the manner of calling the same and the manner for the calling of special meetings, and shall establish rules for its proceedings and may adopt such rules and regulations not inconsistent with law as may be necessary for the exercise of the powers conferred and the performance of the duties imposed upon the board. All of the sessions of such board, whether regular or special, shall be open to the public, and a majority of the members of such board shall constitute a quorum for the transaction of business.

Source: Laws 1959, c. 83, § 8, p. 377; Laws 1972, LB 1168, § 3; R.S.1943, (1987), § 23-343.27.

23-3537 Repealed. Laws 1994, LB 76, § 615.

23-3538 Secretary-treasurer; bond.

The secretary-treasurer of such district shall give a corporate surety bond, in such penal sum, not less than five thousand dollars, as the board of directors shall determine, conditioned upon the faithful performance of all duties imposed upon him and the faithful and accurate accounting for all money belonging to such district coming into his possession.

Source: Laws 1959, c. 83, § 10, p. 378; R.S.1943, (1987), § 23-343.29.

23-3539 Hospital district; additional land; annexation; procedure.

A petition seeking the annexation of additional land to such district, signed by the legal voters in the area proposed for annexation equal in number to ten percent of the number of votes cast in the area for Governor at the last general election, may be filed with the board of directors. The board shall submit the question of annexation of such area to the legal voters of the district and of the area proposed for annexation, which question shall be submitted at the next annual hospital district election. If a majority of those voting on the question in the district and a majority of those voting on the question in the area proposed for annexation vote in favor of annexation, the board of directors shall declare such area annexed and certify the altered boundaries of the district to the county board of the county in which the annexed area is located and of the county in which the greater portion of the district is located.

Source: Laws 1959, c. 83, § 11, p. 378; R.S.1943, (1987), § 23-343.30.

23-3540 Hospital district; withdrawal of land from district; procedure.

A petition seeking the withdrawal of land from such district signed by the legal voters in the area proposed for withdrawal equal in number to ten percent of the number of votes cast for Governor at the last general election may be filed with the board of directors. If the board finds that the portion of the district that would remain after such proposed withdrawal would have a minimum taxable valuation of eight million six hundred thousand dollars, it shall submit the question of withdrawal of such area to the legal voters of the district at the next annual hospital district election. If a majority of those voting on the question in the area sought to be withdrawn and a similar majority in the remaining portion of the district vote in favor of such withdrawal, the board of directors shall declare such area withdrawn and certify the altered boundaries of the district to the county board of the county in which the withdrawn

area is located and of the county in which the greater portion of the district is located.

Source: Laws 1959, c. 83, § 12, p. 378; Laws 1972, LB 1048, § 1; Laws 1979, LB 187, § 110; R.S.1943, (1987), § 23-343.31; Laws 1992, LB 719A, § 117.

23-3541 Hospital district; annexation or withdrawal; resubmission.

If the question of annexation or withdrawal is defeated at the polls, it may again be submitted after the expiration of one year.

Source: Laws 1959, c. 83, § 13, p. 379; R.S.1943, (1987), § 23-343.32.

23-3542 Hospital district; area excluded from district; outstanding obligations; chargeable.

Any area excluded from a district shall be subject to assessment and be otherwise chargeable for the payment and discharge of all of the obligations outstanding at the time of the filing of the petition for the exclusion of the area as fully as though the area had not been excluded. All provisions which could be used to compel the payment by an excluded area of its portion of the outstanding obligations had the exclusion not occurred may be used to compel the payment on the part of the area of the portion of the outstanding obligations of the district for which it is liable.

Source: Laws 1959, c. 83, § 14, p. 379; R.S.1943, (1987), § 23-343.33.

23-3543 Hospital district; area withdrawn; not subject to assessments after withdrawal.

An area withdrawn from a district shall not be subject to assessment or otherwise chargeable for any obligation of any nature or kind incurred after the withdrawal of the area from the district.

Source: Laws 1959, c. 83, § 15, p. 379; R.S.1943, (1987), § 23-343.34.

23-3544 Hospital district; dissolution; petition; signatures required; submission to electors.

Upon the filing of a petition with the board of directors signed by ten percent of the qualified electors in the district, the board of directors shall submit the question of dissolution of the district to the district electors at the next annual district election. If a majority of the voters favor dissolution, the board shall by resolution dissolve the district.

Source: Laws 1959, c. 83, § 16, p. 379; R.S.1943, (1987), § 23-343.35.

23-3545 Hospital district; dissolution; resolution; winding up of affairs.

The board of directors shall file a certified copy of the resolution of dissolution with the county board of each of the counties in which any part of the district is situated, and thereupon the district shall be dissolved for all purposes, except for winding up its affairs. The board of directors shall be, ex officio, the governing body of any dissolved district, and it may perform all acts necessary to wind up the affairs of the district.

Source: Laws 1959, c. 83, § 17, p. 379; R.S.1943, (1987), § 23-343.36.

23-3546 Hospital district; dissolution; convert property to cash; disposition.

When a district is dissolved its board of directors shall convert all property of the district to cash and discharge all indebtedness of the district. All funds remaining after discharge of the district's indebtedness shall be deposited in the county treasuries of the counties in which the district is located in proportion to the population of the district located in each county, and credited to the general fund.

Source: Laws 1959, c. 83, § 18, p. 380; R.S.1943, (1987), § 23-343.37.

23-3547 Hospital district; general powers; hospital, defined.

Each local hospital district shall have and exercise the following powers:

(1) To have and use a corporate seal and alter it at pleasure;

(2) To sue and be sued in all courts and places and in all actions and proceedings whatever;

(3) To purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within and outside the district and to control, dispose of, convey, and encumber the same and create a leasehold interest in such property for the benefit of the district;

(4) To exercise the right of eminent domain for the purpose of acquiring real or personal property of every kind necessary to the exercise of any of the powers of the district, which power shall be exercised in the manner provided in sections 76-704 to 76-724;

(5) To administer any trust declared or created for hospitals of the district and receive by gift, devise, or bequest and hold in trust or otherwise property situated in this state or elsewhere and, when not otherwise provided, dispose of the same for the benefit of such hospitals;

(6) To employ legal counsel to advise the board of directors in all matters pertaining to the business of the district and to perform such functions in respect to the legal affairs of the district as the board may direct;

(7) To employ such officers and employees, including architects and consultants, as the board of directors deems necessary to carry on properly the business of the district;

(8) To prescribe the duties and powers of the manager, secretary, and other officers and employees of any such hospitals, to determine the number of and appoint all such officers and employees, and to fix their compensation. Such officers and employees shall hold their offices or positions at the pleasure of such boards;

(9) To do any and all things which an individual might do which are necessary for and to the advantage of a hospital;

(10) To establish, maintain, lease, or operate one or more hospitals within or outside the district, or both. For purposes of the Nebraska Local Hospital District Act, hospital has the meaning provided in subdivision (10) of section 23-3594;

(11) To do any and all other acts and things necessary to carry out the Nebraska Local Hospital District Act; and

(12) To acquire, maintain, and operate ambulances or an emergency medical service, including the provision of scheduled and unscheduled ambulance service, within and outside the district.

Source: Laws 1959, c. 83, § 19, p. 380; Laws 1969, c. 158, § 1, p. 730; Laws 1987, LB 134, § 7; R.S.1943, (1987), § 23-343.38; Laws 1994, LB 1118, § 18; Laws 1997, LB 28, § 1; Laws 1997, LB 138, § 34; Laws 2001, LB 808, § 2.

23-3548 Hospital district; board of directors; purchase of equipment.

(1) The board of directors may purchase all necessary surgical instruments and hospital equipment and equipment for nurses' homes and all other property necessary for equipping a hospital and nurses' home.

(2) The board of directors may purchase such real property, and erect or rent and equip such buildings or building, room or rooms as may be necessary for the hospital.

Source: Laws 1959, c. 83, § 20, p. 381; R.S.1943, (1987), § 23-343.39.

23-3549 Hospital district; board of directors; operation; fix rates.

The board of directors shall be responsible for the operation of all hospitals owned or leased by the district, according to the best interests of the public health and shall make and enforce all rules, regulations, and bylaws necessary for the administration, government, protection, and maintenance of hospitals under their management and all property belonging thereto and may prescribe the terms upon which patients may be admitted thereto. Such hospitals shall not contract to care for indigent county patients at below the cost for care. In fixing the rates the board shall, insofar as possible, establish such rates as will permit the hospital to be operated upon a self-supporting basis. The board may establish different rates for residents of the district than for persons who do not reside within the district. Minimum standards of operation as prescribed in sections 23-3528 to 23-3552 shall be established and enforced by the board of directors.

Source: Laws 1959, c. 83, § 21, p. 382; R.S.1943, (1987), § 23-343.40.

23-3550 Hospital district; board; membership in organization; dues.

The board of directors may maintain membership in any local, state or national group or association organized and operated for the promotion of the public health and welfare or the advancement of the efficiency of hospital administration, and in connection therewith pay dues and fees thereto.

Source: Laws 1959, c. 83, § 23, p. 382; R.S.1943, (1987), § 23-343.42.

23-3551 Hospital district; board of directors; officers; books and records; open to inspection.

The board of directors shall annually select such officers as may be necessary. The board shall cause to be kept accurate minutes of all meetings and accurate records and books of accounts, conforming to approved methods of bookkeeping, clearly reflecting the entire operation, management, and business of the district, which shall be kept at the principal place of business of the district. All

books, papers, and vouchers shall be subject to public inspection at all reasonable hours.

Source: Laws 1959, c. 83, § 24, p. 382; R.S.1943, (1987), § 23-343.43.

23-3552 Hospital district; board of directors; budget statement; tax; levy; limitation; additional annual tax; election; collection.

(1) The board of directors may, after the adoption of the budget statement, levy and collect an annual tax which the district requires under the adopted budget statement to be received from taxation for the ensuing fiscal year not to exceed three and five-tenths cents on each one hundred dollars of the taxable value of the taxable property within such district. On and after July 1, 1998, the tax levy provided in this subsection is subject to section 77-3443.

(2) In addition to the levy authorized in subsection (1) of this section, the board of directors of a hospital district may authorize an additional annual tax not to exceed three and five-tenths cents on each one hundred dollars of the taxable value of the taxable property within such district. On and after July 1, 1998, the tax levy provided in this subsection is subject to section 77-3443. Such tax shall not be authorized until the question of such additional tax has been submitted to the qualified electors of the district at a primary or general election or a special election called for that purpose and a majority of those voting approve the additional tax. Notice of the time and place of the special election shall be given by publication at least once each week in a legal newspaper of general circulation in the district for three successive weeks immediately preceding such election.

(3) Until July 1, 1998, the taxes authorized by subsections (1) and (2) of this section shall not be included within the levy limitations for general county purposes prescribed in section 23-119 or Article VIII, section 5, of the Constitution of Nebraska. On and after July 1, 1998, the taxes authorized by subsections (1) and (2) of this section shall not be included within the levy limitations for general county purposes prescribed in section 77-3442 or Article VIII, section 5, of the Constitution of Nebraska. On and after July 1, 1998, for purposes of section 77-3443, the county board of each of the counties having land embraced within the district shall approve the tax levy.

(4) The taxes authorized by subsections (1) and (2) of this section shall not be used to support or supplement the operations of health care services or facilities located outside the geographic boundaries of the district.

(5) The board shall annually, on or before September 20, certify the taxes authorized by this section to the county clerk of each of the counties having land embraced within such district. The county clerk shall extend such levies on the tax list, and the county treasurer shall collect the tax in the same manner as county taxes and shall remit the taxes collected to the county treasurer of the county in which the petition for the formation of the district was filed. The county treasurer shall credit the local hospital district with the amount thereof and make disbursements therefrom on warrants of the district signed by the chairperson and secretary-treasurer of the board of directors.

Source: Laws 1959, c. 83, § 27, p. 383; Laws 1969, c. 145, § 29, p. 690; Laws 1979, LB 187, § 111; Laws 1986, LB 753, § 1; R.S.1943, (1987), § 23-343.46; Laws 1992, LB 1063, § 23; Laws 1992, LB

1019, § 28; Laws 1992, Second Spec. Sess., LB 1, § 23; Laws 1993, LB 734, § 34; Laws 1995, LB 452, § 7; Laws 1996, LB 1114, § 50; Laws 1997, LB 28, § 2.

23-3553 Depreciation funds, authorized; limitations on use.

Nothing contained in sections 23-3501 to 23-3519 and 23-3528 to 23-3552 shall be construed to prohibit the board of trustees of any facility specified in section 23-3501 or local hospital district from establishing depreciation funds from patient or other revenue income for the purpose of replacing equipment or providing for future improvements or additions or from using such patient or other revenue income for purchasing equipment or for retiring indebtedness incurred for improvements or additions not financed by bonds of the county or direct tax levies. The limitations upon expenditures provided for in sections 23-3504 and 23-3508 shall not apply to expenditures made from patient or other revenue income or for the retiring of indebtedness or payment of other obligations from such patient or revenue income. Any amounts expended by the board of trustees of any facility or facilities or a local hospital district for the purposes provided in this section on or before July 6, 1965, without a bond issue or tax levy shall not be considered to have been expended without statutory authority but shall be considered proper expenditures if made for the purposes stated in this section.

Source: Laws 1965, c. 95, § 1, p. 411; Laws 1967, c. 121, § 17, p. 395; Laws 1991, LB 798, § 5; R.S.Supp.,1991, § 23-343.48; Laws 1992, LB 1240, § 23.

23-3554 Hospital district; bonds; issuance; purpose.

The board of directors of any hospital district may, on the terms and conditions set forth in sections 23-3554 to 23-3572, issue the bonds of the district for the purpose of (1) purchasing a site for and erecting thereon a hospital, nursing home, or both, or for such purchase or erection, and furnishing and equipping the same, in such district, (2) purchasing an existing building or buildings and related furniture and equipment, including the site or sites upon which such building or buildings are located, for use as a hospital, nursing home, or both, and to furnish and equip them in such district, (3) retiring registered warrants, and (4) paying for additions to or repairs for a hospital, nursing home, or both.

Source: Laws 1967, c. 109, § 1, p. 352; Laws 1972, LB 1168, § 5; R.S.1943, (1987), § 23-343.49.

23-3555 Hospital district; bonds; issuance; approval of electors.

No bonds shall be issued under the provisions of sections 23-3554 to 23-3572 until the question has been submitted to the qualified electors of the district, and a majority of all the qualified electors voting on the question shall have voted in favor of issuing the same, at a special election called for that purpose, upon notice given by the board of directors at least twenty days prior to such election.

Source: Laws 1967, c. 109, § 2, p. 352; R.S.1943, (1987), § 23-343.50.

23-3556 Hospital districts; bonds; issuance; petition.

A vote shall be ordered upon the issuance of such bonds either (1) upon resolution of a majority of the members of the board of directors, or (2) whenever a petition shall be presented to the board requesting that a vote be taken for or against the issuing of bonds in such amount as may be specified for any one or more of the purposes authorized by section 23-3554. Such petition shall be signed by at least ten percent of the qualified voters of such district.

Source: Laws 1967, c. 109, § 3, p. 352; R.S.1943, (1987), § 23-343.51.

23-3557 Hospital districts; bonds; issuance; election; polling places; ballots; counting.

In all elections at which the registered voters of hospital districts are voting on the question of issuing bonds of the district, the board of directors shall designate the polling places, prepare the form of ballot, and appoint the election officials. Ballots for early voting shall be issued by the secretary of the board of directors in the same manner as provided in the Election Act and returned to the secretary. All ballots cast at the election shall be counted by the same board. When all the ballots have been counted, the returns of such election shall be turned over to the board of directors of the district in which the election was held for the purpose of making a canvass thereof.

Source: Laws 1967, c. 109, § 4, p. 353; Laws 1984, LB 920, § 32; R.S.1943, (1987), § 23-343.52; Laws 1994, LB 76, § 548; Laws 2005, LB 98, § 2.

Cross References

Election Act, see section 32-101.

23-3558 Hospital districts; bonds; issuance; limitation.

The aggregate amount of bonds issued for all purposes in hospital districts shall in no event exceed fourteen percent of the last taxable valuation of all taxable property in such hospital district, but such limitation shall not apply to the issuance of refunding or compromise of indebtedness bonds by any such hospital district for the purpose of retiring outstanding bonds, warrants, or other indebtedness.

Source: Laws 1967, c. 109, § 5, p. 353; Laws 1979, LB 187, § 112; R.S.1943, (1987), § 23-343.53; Laws 1992, LB 719A, § 118.

23-3559 Hospital districts; bonds; interest; rate.

The bonds issued under the provisions of sections 23-3554 to 23-3572 shall draw such interest as shall be agreed upon.

Source: Laws 1967, c. 109, § 6, p. 353; Laws 1969, c. 51, § 85, p. 329; R.S.1943, (1987), § 23-343.54.

23-3560 Hospital districts; bonds; contents.

The bonds shall specify on their face the date, amount, purpose for which issued, time they shall run, and rate of interest. The bonds shall be printed on good paper, with coupons attached for each year's or half year's interest, and the amount of each year's interest shall be placed on corresponding coupons until such bonds shall become due, in such manner that the last coupon shall fall due at the same time as the bonds. The bonds and coupons thereto attached shall be severally signed by the president and secretary of the board of

directors. The bonds and interest shall be payable at the office of the county treasurer in the county in which the district is located and if the district is located in more than one county, at the office of the county treasurer as may be provided in the history of the district and in the bonds.

Source: Laws 1967, c. 109, § 7, p. 353; R.S.1943, (1987), § 23-343.55.

23-3561 Hospital districts; bonds; issuance; statement; contents.

The board of directors of any hospital district in which any bonds may be voted shall, before the issuance of such bonds, make a written statement of all proceedings relative to the vote upon the issuance of such bonds and the notice of the election, the manner and time of giving notice, the question submitted, and the result of the canvass of the vote on the proposition pursuant to which it is proposed to issue such bonds, together with a full statement of the taxable valuation, the number of persons residing within the district, and the total bonded indebtedness of the hospital district voting such bonds. Such statement shall be certified to under oath by the board of directors.

Source: Laws 1967, c. 109, § 8, p. 354; Laws 1979, LB 187, § 113; R.S.1943, (1987), § 23-343.56; Laws 1992, LB 719A, § 119; Laws 2001, LB 420, § 21.

23-3562 Repealed. Laws 2001, LB 420, § 38.

23-3563 Hospital districts; bonds; taxes.

Taxes for the payment of the hospital district bonds and the interest thereon shall be levied in the manner provided by section 23-3565.

Source: Laws 1967, c. 109, § 10, p. 354; R.S.1943, (1987), § 23-343.58; Laws 2001, LB 420, § 22.

23-3564 Repealed. Laws 2001, LB 420, § 38.

23-3565 Hospital districts; bonds; interest; levy; sinking fund.

The county board in each county shall levy annually upon all the taxable property in each hospital district in such county a tax sufficient to pay the interest accruing upon any bonds issued by such hospital district and to provide a sinking fund for the final redemption of the same. Such levy shall be made with the annual levy of the county and the taxes collected with other taxes and when collected shall be and remain in the hands of the county treasurer as a special fund for the payment of the interest upon such bonds and for the final payment of the same at maturity. The county clerk shall furnish a copy of his or her register to the county treasurer. The levy for the purpose of paying off such indebtedness providing a sinking fund for the final redemption of such indebtedness may be in addition to the levy provided for in section 23-3552.

Source: Laws 1967, c. 109, § 12, p. 355; R.S.1943, (1987), § 23-343.60; Laws 1992, LB 719A, § 120.

23-3566 Hospital district, defined.

The phrase hospital district, as used in section 23-3565, shall mean the hospital district as it existed immediately prior to and at the time of the issuance of any bonds by such hospital district, including all lands, property, and inhabitants contained in the hospital district at the time of the issuance of

any bonds, and all portions of the district subsequently separated from the district, whether by the formation of a new district or by any change of boundaries of the original district and all territory annexed to the hospital district during the life of such bonds.

Source: Laws 1967, c. 109, § 13, p. 355; R.S.1943, (1987), § 23-343.61.

23-3567 Hospital district; sinking fund; investment.

Any money in the hands of any treasurer as a sinking fund for the redemption of bonds which are a valid and legal obligation of the hospital district to which such money belongs or for the payment of interest on any such bonds and which is not currently required to retire bonds and pay interest on bonds, shall be invested by the treasurer, when so ordered by the board of directors, in securities authorized as legal investments for counties, school districts or hospital districts. The interest earned on such investments shall be credited to the sinking fund from which the invested funds were drawn.

Source: Laws 1967, c. 109, § 14, p. 355; R.S.1943, (1987), § 23-343.62.

23-3568 Hospital districts; tax; collection; disbursement.

The tax and funds collected under the provisions of sections 23-3554 to 23-3572 shall be deemed pledged and appropriated to the payment of the interest and principal of the registered bonds provided for in sections 23-3554 to 23-3572, until fully satisfied, and the treasurer shall be liable on his official bond for the faithful disbursement of all money so collected or received by him. After the principal and interest of such bonds shall have been fully paid and all obligations for which such fund and taxes were raised have been discharged, the county clerk, upon the order of the county board, shall notify the county treasurer to transfer all such funds remaining in his hands to the credit of the district to which they belong.

Source: Laws 1967, c. 109, § 15, p. 356; R.S.1943, (1987), § 23-343.63.

23-3569 Hospital districts; bonds; maturity; payment.

When any registered bonds shall mature, the same shall be paid off by the treasurer at the place where the same shall be payable out of any money in his hands or under his control for that purpose, and when so paid the same shall be endorsed by the treasurer on the face thereof Canceled, together with the date of such payment, and thereupon shall be filed with the clerk who shall enter satisfaction of such bonds upon the records of such hospital district.

Source: Laws 1967, c. 109, § 16, p. 356; R.S.1943, (1987), § 23-343.64.

23-3570 Hospital districts; bonds; liability of district; redemption.

Any hospital district which has heretofore voted and issued, or which shall hereafter vote and issue, bonds to build or furnish a hospital, or for any other purpose, and which bonds, or any part thereof, still remain unpaid and remain and are a legal liability against such district and are bearing interest, may issue coupon bonds to be substituted in place of, and exchanged for such bonds heretofore issued, whenever such hospital district can effect such substitution and exchange at a rate of not to exceed dollar for dollar or such bonds may be sold for cash where such bonds heretofore issued are subject to the right of redemption at the time the refunding bonds are issued. All bonds issued under

the provisions of sections 23-3570 to 23-3572 must, on their face, contain a clause that the district issuing such bonds shall have the right to redeem such bonds at the expiration of five years from the date of the issuance thereof.

Source: Laws 1967, c. 109, § 17, p. 356; Laws 1969, c. 51, § 86, p. 329; R.S.1943, (1987), § 23-343.65.

23-3571 Hospital districts; bonds; issuance; statement; contents.

Each new bond issued under the provisions of sections 23-3570 to 23-3572 shall state therein (1) the object of its issuance, (2) the section or sections of the law under which the issuance thereof was made, including a statement that the issuance is made pursuant thereto, and (3) the number, date, and amount of the bond or bonds for which it is substituted. Such new bond shall not be delivered until the surrender of the bond or bonds so designated or until such bonds are called for redemption.

Source: Laws 1967, c. 109, § 18, p. 357; R.S.1943, (1987), § 23-343.66.

23-3572 Hospital districts; bonds; new; vote of electors not required.

The issuance of such new bonds shall not require a vote of the people to authorize such issue, and such bonds shall be paid, and the levy be made and tax collected for their payment, in accordance with laws governing the bonds which they are issued to replace.

Source: Laws 1967, c. 109, § 19, p. 357; R.S.1943, (1987), § 23-343.67.

23-3573 Hospital districts; merger; petition; election.

Any two or more hospital districts may merge into one district if a petition for merger is presented to the county board in the county which will include the greater portion of the proposed district by population and such merger is approved by a majority of the voters in the existing districts at an election as provided in section 23-3575. A petition for merger shall be sufficient if for each district affected by the proposed merger it has been either signed by a majority of the board of directors of each district or signed by the legal voters in each district equal to at least ten percent of the number of votes cast in such district for the Governor at the last general election. The petition shall be filed at least sixty days prior to any election.

Source: Laws 1978, LB 560, § 4; R.S.1943, (1987), § 23-343.123.

23-3574 Hospital districts; petition for merger; plan; contents.

The petition for merger shall include a plan for the proposed merger which plan shall contain:

(1) A description of the proposed boundaries of the merged district;

(2) A summary statement of the reasons for the proposed merger;

(3) The amount of the outstanding bonded indebtedness of each district and the manner in which such outstanding bonded indebtedness is proposed to be allocated if the merger is approved;

(4) The amount of outstanding indebtedness other than the bonded indebtedness of each district;

(5) The name of the proposed district; and

(6) Such other matters as the petitioner shall determine proper to be included.

Source: Laws 1978, LB 560, § 5; R.S.1943, (1987), § 23-343.124.

23-3575 Hospital districts; merger; election; procedure.

After determining the sufficiency of the petition presented under section 23-3573, the county board shall by resolution provide for the submission of the question of the merger of the districts at a general, primary, or special election. If a special election is called, the costs of such election shall be borne equally by the districts petitioning for the merger. If the question is submitted at a special election, the county clerk or election commissioner of each county having registered voters entitled to vote on the issue shall conduct the special election in such county and shall be responsible for designating the polling places and appointing the election officials, who need not be the regular election officials, and otherwise conducting the election within such county. The county board shall designate the form of ballot.

The county clerk or election commissioner for the county whose county board has received the petition and called the election shall be responsible for giving notice of the special election. Such notice shall be published at least twenty days prior to the election and shall be published, for each district, in a legal newspaper of general circulation in such district. The notice of election shall state where ballots for early voting may be obtained pursuant to the Election Act.

In any such special election, the ballots shall be counted by the county clerks or election commissioners conducting the election and each such county clerk or election commissioner shall designate two disinterested persons to assist him or her with the counting of ballots. If the question is submitted at the statewide general election or primary election, the ballots shall be counted as provided in the Election Act. When all of the ballots have been counted in each county, the returns of such election shall be canvassed by the county canvassing board.

All elections conducted pursuant to this section shall be conducted as provided under the Election Act except as otherwise specifically provided for in this section.

Source: Laws 1978, LB 560, § 6; Laws 1984, LB 920, § 33; R.S.1943, (1987), § 23-343.125; Laws 1994, LB 76, § 549; Laws 2005, LB 98, § 3.

Cross References

Election Act, see section 32-101.

23-3576 Hospital districts; merger; voter approval; order.

If after canvassing the returns for each county the county board determines that the merger has been approved by a majority of the voters in each district, the county board shall enter an order for the merger of the districts.

Source: Laws 1978, LB 560, § 7; R.S.1943, (1987), § 23-343.126.

23-3577 Hospital districts; merger; new officers; board of directors; elected; term.

Immediately following the entry of the order of merger by the county board, the members of the board of directors of the former hospital districts which

were merged by such order shall meet and elect from among themselves a chairperson, vice-chairperson, and secretary-treasurer. No more than two of such offices may be held by persons from one of such former hospital districts. The members of such boards shall adopt as rules for its proceeding the rules of one of such former districts with such changes and modifications as the members shall deem necessary. The members of the board of directors shall continue to serve as members of the board of directors of the merged district until the next statewide primary, at which time a board of directors, consisting of five members, shall be elected from the merged district for staggered terms of two for two years and three for four years in the manner prescribed for the election of an original board under section 23-3534.

Source: Laws 1978, LB 560, § 8; R.S.1943, (1987), § 23-343.127.

23-3578 Hospital districts; merger; property, debts, liabilities; transferred; exception.

After the entry by the county board of its order for merger of the districts, all property, debts, and liabilities of the former hospital districts shall be transferred to the new district, except that all outstanding bonded indebtedness of the previously existing hospital districts shall be allocated to the real estate included within such prior existing districts as provided in the plan of merger.

Source: Laws 1978, LB 560, § 9; R.S.1943, (1987), § 23-343.128.

(c) HOSPITAL AUTHORITIES

23-3579 Act, how cited.

Sections 23-3579 to 23-35,120 shall be known and may be cited as the Hospital Authorities Act.

Source: Laws 1971, LB 54, § 1; R.S.1943, (1987), § 23-343.74; Laws 1993, LB 815, § 1.

23-3580 Hospital Authorities Act; declaration of purpose.

It is declared that conditions resulting from the concentration of population of various counties, cities, and villages in this state require the construction, maintenance, and operation of adequate hospital facilities for the care of the public health and for the control and treatment of epidemics, for the care of the indigent and for the public welfare; that in various counties, cities, and villages of the state there is a lack of adequate hospital facilities available to the inhabitants thereof and that consequently many persons including persons of low income are forced to do without adequate medical and hospital care and accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the state and impair economic values; that these conditions cannot be remedied by the ordinary operations of private enterprises; that the providing of adequate hospital and medical care are public uses; that it is in the public interest that adequate hospital and medical facilities and care be provided in order to care for and protect the health and public welfare; and the necessity in the public interest for the provisions of sections 23-3579 to 23-35,120 is hereby declared as a matter of legislative determination.

It is hereby further declared as a matter of legislative determination that high interest rates are contributing to rising costs of health care, that techniques of

financing health care facilities have changed, that existing financing documents may impose unnecessary burdens, and that the giving of power to hospital authorities created pursuant to sections 23-3579 to 23-35,120 to refinance existing indebtedness and to utilize improved financing techniques would serve the public interest by improving the quality of health care or minimizing the cost thereof.

Source: Laws 1971, LB 54, § 2; Laws 1980, LB 801, § 1; R.S.1943, (1987), § 23-343.75.

23-3581 Hospital authority; public corporation; powers.

Whenever it shall be conducive to the public health and welfare, a hospital authority constituting a public corporation and body politic may be established in the manner and having the powers and duties provided in sections 23-3579 to 23-35,120.

Source: Laws 1971, LB 54, § 3; R.S.1943, (1987), § 23-343.76.

23-3582 Hospital authority; formation; requirements.

(1) Whenever the formation of a hospital authority is desired, a petition or petitions stating (a) the general location of the hospital to be maintained by such proposed authority, (b) the territory to be included within it, which territory shall be contiguous, (c) the approximate number of persons believed to reside within the boundaries of the proposed authority, and (d) the names of five or more, but not exceeding eleven, proposed trustees, who shall be electors residing within the boundaries of the proposed authority, to serve as a board of trustees until their successors are appointed and qualified, should the authority be formed, together with a prayer that the same be declared to be a hospital authority under the Hospital Authorities Act may be filed in the office of the county clerk of the county in which the proposed authority is situated.

(2)(a) Each hospital authority established in a county having a total population of three hundred thousand or more, as shown by the most recent federal census, shall encompass an area in which at least forty thousand persons reside, (b) each hospital authority established in a county having a total population of one hundred fifty thousand to three hundred thousand, as shown by the most recent federal census, shall encompass an area in which at least thirty thousand persons reside, (c) each hospital authority established in a county having a total population of twenty thousand to one hundred fifty thousand, as shown by the most recent federal census, shall encompass an area in which at least twenty thousand persons reside, and (d) no hospital authority shall be established in any county having a total population of less than twenty thousand, as shown by the most recent federal census, unless the hospital authority encompasses the entire county which it is to serve. Such petitions shall be signed by at least one hundred electors who appear to reside within the suggested boundaries of the proposed authority.

Source: Laws 1971, LB 54, § 4; R.S.1943, (1987), § 23-343.77; Laws 1993, LB 815, § 2.

23-3583 Hospital authority; formation; petitions; notice; contents.

Upon receipt of such petitions, the county clerk shall set the date for a hearing thereon, which shall not be less than twenty nor more than forty-five days from their date of filing, and cause notice thereof to be published on the

same day in each of three successive weeks in one or more newspapers of general circulation throughout the area to be included in the proposed authority. Such notice shall contain a statement of the information contained in such petitions and of the date, time, and place at which such hearing shall be held before the board of county commissioners and that at such hearing proposals may be considered for the exclusion of land from or the inclusion of additional land in such proposed authority, and for designating as initial trustees persons other than those named in the petitions.

Source: Laws 1971, LB 54, § 5; R.S.1943, (1987), § 23-343.78.

23-3584 Hospital authority; objections; contents.

All electors residing within the boundaries of the proposed authority who have not signed the petitions and who may object to the organization of the authority or to any one or more of the proposed trustees shall, not less than five days prior to the date set for the hearing on the petitions, file with the county clerk any such objection in writing, stating (1) why such hospital authority should not be organized and declared a public corporation in this state, (2) why the territory comprising the authority should be enlarged, decreased or otherwise changed, and (3) their objections to any one or more of the proposed trustees.

Source: Laws 1971, LB 54, § 6; R.S.1943, (1987), § 23-343.79.

23-3585 Hospital authority; formation; submission to health planning agency prior to hearing; findings.

Prior to the holding of a hearing on the petitions, the question of forming the proposed hospital authority shall be submitted to the appropriate local or area health planning agency for its consideration and review if there has been created, pursuant to state or federal law, such a local or area health planning agency having jurisdiction within the area in which the proposed hospital authority is to be established. Such local or area health planning agency shall within sixty days render its findings and recommendations, if any, and shall be deemed to have approved the formation of the proposed hospital authority if its findings and recommendations have not been rendered within such period of sixty days.

Source: Laws 1971, LB 54, § 7; Laws 1986, LB 733, § 1; R.S.1943, (1987), § 23-343.80.

23-3586 Hospital authority; hearing; county board; findings; initial trustees; qualifications; terms.

Such petitions, written objections, findings, and recommendations filed as provided in sections 23-3584 and 23-3585, if any, shall be heard by the county board without any unnecessary delay. In making its determination with respect to whether or not a proposed authority should be declared a public corporation of this state, the county board shall ascertain, to its satisfaction, that all of the requirements set forth in the Hospital Authorities Act have been met or complied with. If the county board determines that the formation of such authority will be conducive to the public health, convenience, or welfare, it shall declare the authority a public corporation and body politic of this state and shall declare the trustees nominated, or in case of meritorious objection thereto, other suitable trustees who shall be electors residing within the county

in which the authority is situated, to be the board of trustees of the authority to serve until their successors are appointed and qualified. The board of trustees shall not consist of more than eleven members. In arriving at its determination as to who should be appointed to initial membership on the board of trustees of an authority, the county board shall give due consideration to each nominee's general reputation in the community, his or her education and experience in areas such as education, medicine, hospital administration, business management, finance, law, engineering, and other fields which might be of benefit to the authority, his or her background in public service activities, the amount of time and energy that he or she might be expected to be able to devote to the affairs of the authority, and such other factors as the county board may deem relevant. One or more of the trustees initially appointed shall be consumers of health care services as distinguished from providers of health care services. The county board in appointing the initial trustees shall classify such initial trustees so that approximately one-third of their number shall serve for two years, approximately one-third of their number shall serve for four years, and approximately one-third of their number shall serve for six years, their successors to be thereafter appointed for terms of six years each.

Source: Laws 1971, LB 54, § 11; Laws 1986, LB 733, § 2; R.S.1943, (1987), § 23-343.84; Laws 1993, LB 815, § 3; Laws 1996, LB 898, § 1.

23-3586.01 Repealed. Laws 1996, LB 898, § 8.

23-3587 Hospital authority; certificate; transmit to Secretary of State; county clerk.

Within twenty days after the authority has been declared a public corporation and body politic by the county board, the county clerk shall transmit to the Secretary of State a certified copy of the record relating thereto, and the same shall be filed in his office in the same manner as articles of incorporation are required to be filed under the general law concerning corporations. A copy of such record shall also be filed by the county clerk in his own office.

Source: Laws 1971, LB 54, § 12; R.S.1943, (1987), § 23-343.85.

23-3588 Hospital authority; corporate name.

Such authority shall be a public body corporate and politic by the name of Hospital Authority No. ..... of ..... County, Nebraska.

Source: Laws 1971, LB 54, § 13; R.S.1943, (1987), § 23-343.86.

23-3589 Hospital authority; trustees; meetings; officers; expenses; seal; rules and regulations.

Within thirty days after the county board shall have declared the authority a public corporation, the trustees so appointed by the county board shall meet and elect one of their number chairperson, one of their number vice-chairperson, and one of their number secretary of the authority. The trustees shall serve without compensation, except that each shall be allowed his or her actual and necessary traveling and incidental expenses incurred in the performance of his or her official duties with reimbursement for mileage to be made at the rate provided in section 81-1176. The board shall (1) adopt a seal, bearing the name of the authority, (2) keep a record of all of its proceedings which shall be open

to inspection by all interested persons during regular business hours and under reasonable circumstances, and (3) establish the time and place of holding its regular meetings and the manner of calling special meetings and shall have the power from time to time to pass all necessary resolutions, orders, rules, and regulations for the necessary conduct of its business and to carry into effect the objects for which such authority was formed.

Source: Laws 1971, LB 54, § 14; Laws 1981, LB 204, § 24; R.S.1943, (1987), § 23-343.87; Laws 1996, LB 1011, § 18.

23-3590 Hospital authority; trustees; vacancy; how filled.

Any vacancy upon the board of trustees, occurring other than by the expiration of a term, shall be filled by appointment by the remaining members of the board of trustees. Any person appointed to fill such vacancy shall serve for the remainder of the unexpired term. There shall at all times be one or more members of the board of trustees who are consumers of health care services as distinguished from providers of health care services.

Source: Laws 1971, LB 54, § 15; R.S.1943, (1987), § 23-343.88.

23-3591 Hospital authority; trustees; election.

Candidates for other than initial appointment to the board of trustees of a hospital authority may be nominated by petitions signed by not less than twenty-five electors residing within the boundaries of the authority. Such petitions shall be filed with the board of trustees not less than forty-five days prior to the date upon which the term of office of any trustee is due to expire. Not less than thirty days prior to such date of expiration the board of trustees shall cause such petitions to be filed in the office of the county clerk of the county in which the authority is situated. Upon receipt of such petitions, the county clerk shall set the date for a hearing thereon, which shall be not less than ten nor more than forty-five days from their date of filing, and cause notice thereof to be published on the same day in each of two successive weeks in one or more newspapers of general circulation throughout the area included within the authority. Such notice shall contain the date, time and place at which such hearing shall be held before the county board; the names of each person nominated for appointment to a six-year term on the board of trustees of the authority; and that at the hearing before the county board objections will be heard to the appointment of any one or more of the persons nominated. Any member of the board of trustees may be nominated for reappointment.

Source: Laws 1971, LB 54, § 16; R.S.1943, (1987), § 23-343.89.

23-3592 Hospital authority; trustees; appointment; objections; file with county clerk.

All electors residing within the boundaries of the authority who have not signed the petitions nominating a candidate for appointment to the board of trustees may, not less than five days prior to the date set for hearing on the nominations, file with the county clerk any objections to the appointment of any such candidate stating their objections to any one or more of the candidates.

Source: Laws 1971, LB 54, § 17; R.S.1943, (1987), § 23-343.90.

23-3593 Hospital authority; trustees; nominations; objections; hearing; findings; appointment.

The petitions for nomination of candidates for the office of trustee of an authority, and any written objections filed as provided in section 23-3592, if any, shall be heard by the county board without unnecessary delay. In arriving at its determination as to which of the candidates should be appointed to serve a six-year term on the board of trustees of the authority, the county board shall give due consideration to each nominee's general reputation in the community, his education and experience in areas such as education, medicine, hospital administration, business management, finance, law, engineering and other fields which might be of benefit to the authority, his background in public service activities, the amount of time and energy that he might be expected to be able to devote to the affairs of the authority and such other factors as the county board may deem relevant. At the conclusion of the hearing, the county board shall, within ten days, enter its order appointing such candidate or candidates as it shall have determined upon to serve a term of six years on the board of trustees of the authority, such term of office to continue until a successor has been appointed.

Source: Laws 1971, LB 54, § 18; R.S.1943, (1987), § 23-343.91.

23-3594 Hospital authority; powers.

Each hospital authority shall have and exercise the following powers:

(1) To have perpetual succession as a body politic and corporate, except that any county board having declared a hospital authority to be a public corporation and body politic of this state shall, upon a showing duly made and with appropriate notice given to the Secretary of State, but not sooner than upon expiration of a period of two years from and after the date upon which the record relating to formation of such hospital authority was filed with the Secretary of State pursuant to section 23-3587, enter an order dissolving any hospital authority which does not then have under construction, own, lease as lessee or as lessor, or operate a hospital;

(2) To have and use a corporate seal and alter it at pleasure;

(3) To sue and be sued in all courts and places and in all actions and proceedings whatever;

(4) To purchase, receive, have, take, hold, lease as lessee, use, and enjoy property of every kind and description within the limits of the authority and to control, dispose of, sell for a nominal or other consideration, convey, and encumber the same and create a leasehold interest in the same, as lessor, with any nonprofit person, firm, partnership, limited liability company, association, or corporation, other than a county, city, or village in this state, for the benefit of the authority;

(5) To administer any trust declared or created for hospitals of the authority and to receive by gift, devise, or bequest and hold, in trust or otherwise, property situated in this state or elsewhere and, if not otherwise provided, dispose of the same for the benefit of such hospitals;

(6) To employ legal counsel to advise the board of trustees in all matters pertaining to the business of the authority and to perform such functions with respect to the legal affairs of the authority as the board may direct;

(7) To employ such technical experts and such officers, agents, and employees, permanent and temporary, as it may require and to determine their qualifications, duties, and compensation, such technical experts, officers,

agents, and employees to hold their offices or positions at the pleasure of the board;

(8) To delegate to one or more of its agents or employees such powers and duties as it deems proper;

(9) To do any and all things which an individual might do which are necessary for and to the advantage of a hospital;

(10) To purchase, construct, establish, or otherwise acquire and to improve, alter, maintain, and operate one or more hospitals situated within the territorial limits of the authority. The term hospital as used in the Hospital Authorities Act shall mean and include, except as used in section 23-3597, any structure or structures suitable for use as a hospital, nursing home, clinic, or other health care facility, laboratory, laundry, nurses' or interns' residences and dormitories, administration buildings, research facilities, and maintenance, storage, or utility facilities and other structures or facilities reasonably related thereto or required or useful for the operation thereof, including parking and other facilities or structures essential or convenient for the orderly operation thereof and shall also include furniture, instruments, equipment, and machinery and other similar items necessary or convenient for the operations thereof, and any hospital authority which has established or acquired a hospital may also purchase, construct, or otherwise acquire and improve, alter, maintain, and operate all types of ancillary care facilities, including rehabilitation, recreational, and research facilities for children, addicted persons, disabled individuals, and elderly persons, including both residential and outpatient care and ancillary facilities for physicians, technicians, educators, psychologists, social scientists, scientists, nutritionists, administrators, interns, residents, nurses, students preparing to engage in the health service field, and other health care related personnel;

(11) To enter into contracts and other agreements for the purchase, construction, establishment, acquisition, management, operation, and maintenance of any hospital or any part thereof upon such terms and conditions and for such periods of time as its board of trustees may determine;

(12) To do any and all other acts and things necessary to carry out the Hospital Authorities Act, including the power to borrow money on its bonds, notes, debentures, or other evidences of indebtedness and to secure the same by pledges of its revenue in the manner and to the extent provided in the act and to fund or refund the same; and

(13) To acquire, maintain, and operate ambulances or an emergency medical service, including the provision of scheduled or unscheduled ambulance service, within and without the authority.

Source: Laws 1971, LB 54, § 19; Laws 1972, LB 1382, § 1; Laws 1974, LB 693, § 3; R.S.1943, (1987), § 23-343.92; Laws 1993, LB 121, § 164; Laws 1993, LB 815, § 5; Laws 1996, LB 898, § 2; Laws 1997, LB 138, § 35; Laws 2001, LB 808, § 3.

23-3594.01 Repealed. Laws 1996, LB 898, § 8.

23-3594.02 Repealed. Laws 1996, LB 898, § 8.

23-3594.03 Repealed. Laws 1996, LB 898, § 8.

23-3594.04 Repealed. Laws 1996, LB 898, § 8.

23-3594.05 Repealed. Laws 1996, LB 898, § 8.

23-3594.06 Repealed. Laws 1996, LB 898, § 8.

23-3594.07 Repealed. Laws 1996, LB 898, § 8.

23-3594.08 Repealed. Laws 1996, LB 898, § 8.

23-3594.09 Repealed. Laws 1996, LB 898, § 8.

23-3595 Hospital authority; board of trustees; duties.

All hospitals operated directly by an authority and not operated or leased as lessee by a nonprofit person, firm, partnership, limited liability company, association, or corporation shall be operated by the board of trustees of such authority according to the best interests of the public health, and the board of trustees shall make and enforce all rules, regulations, and bylaws necessary for the administration, government, protection, and maintenance of such hospitals and all property belonging thereto and may prescribe the terms upon which patients may be admitted thereto. Such hospitals shall not be required to contract with counties or with agencies thereof to provide care for indigent county patients at below the cost for care. In fixing the basic room rates for such hospitals, the board of trustees shall establish such basic room rates as will, together with other income and revenue available for such purpose and however derived, permit each such hospital to be operated upon a self-supporting basis. In establishing basic room rates for such hospital, the board of trustees shall give due consideration to at least the following factors: Costs of administration, operation, and maintenance of such hospitals; the cost of making necessary repairs and renewals thereto; debt service requirements; the creation of reserves for contingencies; and projected needs for expansion and for the making of major improvements. Minimum standards of operation for such hospitals, at least equal to those set by the Department of Health and Human Services, shall be established and enforced by the board of trustees.

In the case of hospitals financed with the proceeds of bonds issued by an authority, but not operated directly by an authority, the board of trustees shall require that the financing documents contain covenants of the operators of such hospitals to establish rates at least sufficient to pay costs of administration, operation, and maintenance of such hospitals, the cost of making necessary repairs and renewals thereto, and to provide for debt service requirements, the creation of reserves for contingencies, and projected needs for expansion and the making of major improvements.

Source: Laws 1971, LB 54, § 20; Laws 1972, LB 1382, § 2; Laws 1980, LB 801, § 2; R.S.1943, (1987), § 23-343.93; Laws 1993, LB 121, § 165; Laws 1996, LB 1044, § 58; Laws 2007, LB296, § 25.

23-3596 Hospital authority; board of trustees; pecuniary interest in contract; prohibited; penalty.

No member of the board of trustees, or any person who shall have been a member of the board of trustees at any time during the immediately preceding period of two years, shall have any direct or indirect personal pecuniary interest in the purchase of any material to be used by or supplied to such authority, or in any contract with such authority. Any person violating the

provisions of this section shall be guilty of a Class II misdemeanor, and his office shall be vacated.

Source: Laws 1971, LB 54, § 21; Laws 1977, LB 40, § 88; R.S.1943, (1987), § 23-343.94.

23-3597 Hospital authority; structures; construction; submission of plans.

Prior to constructing any structure which is to be utilized as a hospital or as a nursing home, as opposed to structures related thereto, the question of constructing such structure shall be submitted to the appropriate local or area health planning agency for its consideration and review if there has been created, pursuant to state or federal law, such a local or area health planning agency having jurisdiction within the area in which the proposed structure is to be constructed. Such local or area health planning agency shall within sixty days render its findings and recommendations, if any, and shall be deemed to have approved construction of the proposed structure if its findings and recommendations have not been rendered within such period of sixty days. The provisions of this section shall not apply to the purchase or other acquisition by an authority of any interest in any existing structure which is to be utilized as a hospital if such structure has been in existence for more than one year.

Source: Laws 1971, LB 54, § 22; Laws 1972, LB 1382, § 3; Laws 1986, LB 733, § 3; R.S.1943, (1987), § 23-343.95.

23-3598 Hospital authority; construction; plans; recommendations; effect.

The findings and recommendations, if any, of the appropriate local health planning agency, if any, shall be considered by the board of trustees of the hospital authority in making its determination as to whether or not to proceed with construction of the proposed structure.

Source: Laws 1971, LB 54, § 24; Laws 1979, LB 412, § 4; Laws 1986, LB 733, § 4; R.S.1943, (1987), § 23-343.97.

23-3599 Hospital authority; bonds; issuance.

An authority may issue bonds for the purpose of purchasing or otherwise acquiring an existing structure or structures and related furniture and equipment, including the site or sites upon which the same are located, for use as a hospital, and to furnish, equip, alter, renovate, and remodel the same, or for constructing, furnishing, and equipping new facilities or additions or improvements to existing facilities, or for the purpose of providing for the refunding of any bonds issued under sections 23-3579 to 23-35,120.

An authority shall also have the power to issue bonds for the purpose of refinancing indebtedness incurred for the benefit of a hospital.

In lieu of acquiring an interest in a hospital, an authority may lend the proceeds from the sale of its bonds for any of the purposes set forth in this section, and such financing, which shall be pursuant to a loan agreement, may be either unsecured or secured as the board of trustees of the authority shall determine. Bonds may be issued under sections 23-3579 to 23-35,120 notwithstanding any debt or other limitation, including limitation as to interest rates, prescribed in any statute.

Source: Laws 1971, LB 54, § 26; Laws 1972, LB 1382, § 5; Laws 1980, LB 801, § 3; R.S.1943, (1987), § 23-343.99.

23-35,100 Hospital authority; bonds; principal and interest; payment out of revenue.

The principal and interest on such bonds shall be payable exclusively from the income and revenue of the facilities purchased, constructed, altered, renovated, remodeled, furnished and equipped with the proceeds of such bonds or with such proceeds together with the proceeds of a grant from the federal government to aid in financing, furnishing or equipping thereof; *Provided*, that an authority may, in its discretion, also pledge to the payment of the principal and interest on any such bonds all or any part of the income and revenue derived from the operation of any or all of the other facilities then owned or operated by it; *and provided further*, that an authority may in its discretion, also expressly provide that any such bonds shall be general obligations of the authority payable out of any revenue, income, receipts, profits, or other money or funds of the authority derived from any source whatsoever. Such bonds may be additionally secured by a trust indenture.

Source: Laws 1971, LB 54, § 27; Laws 1972, LB 1382, § 6; Laws 1974, LB 693, § 4; R.S.1943, (1987), § 23-343.100.

23-35,101 Hospital authority; trustees; bonds; exempt from liability.

Neither the trustees of the authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

Source: Laws 1971, LB 54, § 28; R.S.1943, (1987), § 23-343.101.

23-35,102 Hospital authority; bonds, obligations; not debt of political subdivision.

The bonds and other obligations of the authority shall not be a debt of any county, city or village in which the authority is located or of the state, and neither the state nor any such county, city or village shall be liable thereon, nor in any event shall they be payable out of any funds or properties other than those of the authority, and such bonds and obligations shall so state on their face. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation of the laws of this state.

Source: Laws 1971, LB 54, § 29; R.S.1943, (1987), § 23-343.102.

23-35,103 Hospital authority; bonds; maturity; interest.

The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series and shall bear such date or dates, mature at such time or times, not exceeding sixty years from their respective dates, bear interest at such rate or rates, payable annually or semiannually, be in such denominations, which may be made interchangeable, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places either within or without the state, and be subject to such terms of redemption, with or without premium, as such resolution or its trust indenture may provide.

Source: Laws 1971, LB 54, § 30; R.S.1943, (1987), § 23-343.103.

23-35,104 Hospital authority; bonds; sale.

The bonds may be sold at public or private sale at such price or prices or such rate or rates, and at such premiums or at such discounts, as the authority shall determine.

Source: Laws 1971, LB 54, § 31; R.S.1943, (1987), § 23-343.104.

23-35,105 Hospital authority; interim certificates; issuance.

Pending the authorization, preparation, execution or delivery of definitive bonds, the authority may issue interim certificates, or other temporary obligations, to the purchaser of such bonds. Such interim certificates, or other temporary obligations, shall be in such form, contain such terms, conditions and provisions, bear such date or dates, and evidence such agreements relating to their discharge or payment or the delivery of definitive bonds as the authority may by resolution or trust indenture determine.

Source: Laws 1971, LB 54, § 32; R.S.1943, (1987), § 23-343.105.

23-35,106 Hospital authority; bonds; signature; validation.

In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery.

Source: Laws 1971, LB 54, § 33; R.S.1943, (1987), § 23-343.106.

23-35,107 Hospital authority; bonds; purchase; cancellation.

The authority shall have the power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof, the then applicable premium payable upon their redemption, or the next applicable redemption premium if the bonds are not then redeemable, and the accrued interest; *Provided*, that bonds payable exclusively from the revenue of a designated facility or facilities shall be purchased only out of any such revenue available therefor. All bonds so purchased shall be canceled. This section shall not apply to the redemption of bonds.

Source: Laws 1971, LB 54, § 34; R.S.1943, (1987), § 23-343.107.

23-35,108 Hospital authority; bonds, interim certificates, obligations; issuance; validation.

Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to the provisions of sections 23-3579 to 23-35,120 shall be fully negotiable.

Source: Laws 1971, LB 54, § 35; R.S.1943, (1987), § 23-343.108.

23-35,109 Hospital authority; bonds; obligations; secure; powers of authority.

In connection with the issuance of bonds or the incurring of any obligations under a lease and in order to secure the payment of such bonds or obligations, the authority shall have power:

(1) To pledge by resolution, trust indenture, or other contract, all or any part of its income, rents, fees, revenue or other funds;

(2) To covenant to impose and maintain such schedule of fees and charges as will produce funds sufficient to pay operating costs and debt service;

(3) To covenant with respect to limitations on its right to sell, lease or otherwise dispose of any hospital facility or any part thereof, or with respect to limitations on its right to undertake additional hospital facilities;

(4) To covenant against pledging all or any part of its income, rents, fees, revenue and other funds to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon;

(5) To provide for the release of income, rents, fees, revenue and other funds, from any pledge and to reserve rights and powers in, or the right to dispose of property, the income, rents, fees and revenue from which are subject to a pledge;

(6) To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, or other instrument and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof;

(7) To covenant as to what other, or additional debt, may be incurred by it;

(8) To provide for the terms, form, registration, exchange, execution and authentication of bonds;

(9) To provide for the replacement of lost, destroyed, or mutilated bonds;

(10) To covenant as to the use of any or all of its property, real or personal;

(11) To create or to authorize the creation of special funds in which there shall be segregated: (a) The proceeds of any bequest, gift, loan or grant; (b) all of the income, rents, fees and revenue of any hospital facility or facilities or parts thereof; (c) any money held for the payment of the costs of operation and maintenance of any such hospital facilities or as a reserve for the meeting of contingencies in the operation and maintenance thereof; (d) any money held for the payment of the principal and interest on its bonds or the sums due under its leases or as a reserve for such payments; and (e) any money held for any other reserve or contingencies; and to covenant as to the use and disposal of the money held in such funds;

(12) To redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof;

(13) To covenant against extending the time for the payment of its bonds or interest thereon, directly or indirectly, by any means or in any manner;

(14) To prescribe the procedure, if any, by which the authority may issue additional parity or junior lien bonds;

(15) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

(16) To covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance money;

(17) To vest in an obligee of the authority the right, in the event of the failure of the authority to observe or perform any covenant on its part to be kept or performed, to cure any such default and to advance any money necessary for such purpose, and the money so advanced may be made an additional obli-

gation of the authority with such interest, security and priority as may be provided in any trust indenture, lease or contract of the authority with reference thereto;

(18) To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(19) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation;

(20) To covenant to surrender possession of all or any part of any hospital facility or facilities the revenue from which have been pledged as provided for in sections 23-3579 to 23-35,120 upon the happening of any event of default, as defined in the contract, and to vest in an obligee the right without judicial proceeding to obtain a substitute lessee for the hospital facilities or any part thereof or to take possession of and to use, operate, manage and control such hospital facilities or any part thereof, and to collect and receive all income, rents, fees and revenue arising therefrom in the same manner as the authority itself might do and to dispose of the money collected in accordance with the agreement of the authority with such obligee;

(21) To vest in a trustee or trustees the right to enforce any covenant made to secure, to pay, or in relation to the bonds, to provide for the powers and duties of such trustee or trustees, to limit liabilities thereof and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any such covenant;

(22) To make covenants other than in addition to the covenants expressly authorized in this section, of like or different character;

(23) To execute all instruments necessary or convenient in the exercise of the powers granted in this section or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those specified in sections 23-3579 to 23-35,120, as the government or any purchaser of the bonds of the authority may reasonably require; and

(24) To make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the authority tend to make the bonds more marketable, notwithstanding that such covenants, acts or things may not be enumerated in this section; it being the intention hereof to give the authority power to do all things in the issuance of bonds and in the making of provisions for their security that are not inconsistent with the Constitution of this state without the consent or approval of any judge or court being required therefor.

Source: Laws 1971, LB 54, § 36; Laws 1972, LB 1382, § 7; R.S.1943, (1987), § 23-343.109.

23-35,110 Hospital authority; bonds; obligee; rights.

An obligee of the authority shall have the right in addition to all other rights which may be conferred on such obligee subject only to any contractual restrictions binding upon such obligee:

(1) By mandamus, suit, action or proceeding in law or equity, all of which may be joined in one action, to compel the authority, and the trustees, officers, agents or employees thereof to perform each and every term, provision and

covenant contained in any resolutions, contracts or trust indentures of the authority, and to require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by the provisions of sections 23-3579 to 23-35,120; or

(2) By suit, action or proceeding in equity to enjoin any acts or things which may be unlawful or the violation of any of the rights of such obligee of the authority.

Source: Laws 1971, LB 54, § 37; R.S.1943, (1987), § 23-343.110.

23-35,111 Hospital authority; bonds; default; remedies of obligees.

Any authority shall have power by its trust indenture, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, lease or other obligations the right upon the happening of an event of default as defined in such instrument:

(1) By suit, action or proceeding in any court of competent jurisdiction to obtain the appointment of a receiver of any hospital facility or facilities of the authority or any part or parts thereof. If such receiver be appointed, he may enter and take possession of such hospital facility or facilities or any part or parts thereof and operate and maintain the same, and collect and receive all income, fees, rents, revenue, or other charges thereafter arising therefrom in the same manner as the authority itself might do and shall keep such money in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct; or

(2) By suit, action or proceeding in any court of competent jurisdiction to require the authority and the trustees thereof to account as if it and they were the trustees of an express trust.

Source: Laws 1971, LB 54, § 38; R.S.1943, (1987), § 23-343.111.

23-35,112 Hospital authority; rights and remedies; cumulative.

All the rights and remedies conferred in sections 23-3579 to 23-35,120 shall be cumulative and shall be subject to sale by the foreclosure of a trust indenture, or any other instrument thereon, or relating to any contract with the authority.

Source: Laws 1971, LB 54, § 39; R.S.1943, (1987), § 23-343.112.

23-35,113 Hospital authority; property; subject to foreclosure; exempt from execution and liens.

No interest of the authority in any property, real or personal, shall be subject to sale by foreclosure of a mortgage, trust indenture, or any other instrument thereon, or relating thereto, either through judicial proceedings or the exercise of a power of sale contained in such instrument. All property of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same. No judgment against the authority shall be a charge or lien upon its property, real or personal. Nothing in this section shall limit or be construed as limiting the right of a holder of a bond to reduce such bond, or the interest thereon, to judgment in the event of the failure of the authority to pay the principal of or interest on such bond as and when the same become due, or to prohibit, or be construed as prohibiting, such holder from enforcing and collecting such judgment out of the revenue

and other money of the authority pledged to the payment of such bond and the interest thereon.

Source: Laws 1971, LB 54, § 40; R.S.1943, (1987), § 23-343.113.

23-35,114 Hospital authority; bonds; refunding; applicability of provisions.

(1) Any hospital authority is hereby authorized to provide for the issuance of bonds of the authority for the purpose of refunding any bonds of the authority then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the earliest or subsequent date of redemption, purchase or maturity of such bonds, and, if deemed advisable by the authority, for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions or enlargements of a hospital or any portion thereof. Any such refunding bonds may, if the board of trustees in its absolute discretion finds the same to be in the best interests of the authority, bear a rate of interest or rates of interest higher than the rate or rates of interest carried by the bonds to be refunded and redeemed.

(2) The proceeds of any such bonds issued for the purpose of refunding outstanding bonds may, in the discretion of the authority, be applied to the purchase or retirement at maturity or redemption of such outstanding bonds either on their earliest or any subsequent redemption date or upon the purchase or at the maturity thereof and may, pending such application, be placed in escrow to be applied to such purchase or retirement at maturity or redemption on such date as may be determined by the authority.

(3) All such refunding bonds shall be subject to the provisions of sections 23-3579 to 23-35,120 in the same manner and to the same extent as other bonds issued pursuant to the provisions of sections 23-3579 to 23-35,120.

Source: Laws 1971, LB 54, § 41; R.S.1943, (1987), § 23-343.114.

23-35,115 Hospital authority; bonds; who may purchase.

Bonds issued by any authority under the provisions of sections 23-3579 to 23-35,120 are hereby made securities in which all agencies, public officers and public bodies of the state and its political subdivisions, all insurance companies, state banks and trust companies, national banking associations, building and loan associations, savings and loan associations, investment companies, executors, administrators, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the state is now or may hereafter be authorized by law, and shall also be eligible and lawful security for all deposits of public funds of the state and of its political subdivisions, to the extent of the full value of the bonds and appurtenant coupons.

Source: Laws 1971, LB 54, § 42; R.S.1943, (1987), § 23-343.115.

23-35,116 Hospital authority; powers; supplemental to other laws; bonds.

The Hospital Authorities Act shall be deemed to provide a complete, additional, and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, except that the issuance of bonds and refunding bonds under the act need not comply with the requirements of any other law applicable to the issuance of bonds, including, but not limited to, Chapter 10, and the bonds shall not be required to be registered in the office of any county clerk or treasurer, comptroller, or finance director of any city or village. The bonds shall constitute exempt securities within the meaning of section 8-1110. Except as otherwise expressly provided in the Hospital Authorities Act, none of the powers granted to an authority under the act shall be subject to the supervision or regulation or require the approval or consent of any municipality or political subdivision or any commission, court, board, body, bureau, official, or agency thereof or of the state.

Source: Laws 1971, LB 54, § 43; R.S.1943, (1987), § 23-343.116; Laws 2001, LB 420, § 23.

23-35,117 Hospital authority; taxation exemption.

The exercise of the powers granted by the provisions of sections 23-3579 to 23-35,120 will be in all respects for the benefit of the people of this state, for the increase of their commerce, welfare and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of a hospital by an authority or its agents will constitute the performance of an essential public function, neither the authority nor its agents shall be required to pay any taxes or assessments upon or in respect of a hospital or any property acquired or used by the authority or its agents under the provisions of sections 23-3579 to 23-35,120 or upon the income therefrom, and any bonds issued under the provisions of sections 23-3579 to 23-35,120, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the state and by the municipalities and other political subdivisions in the state.

Source: Laws 1971, LB 54, § 44; R.S.1943, (1987), § 23-343.117.

23-35,118 Hospital authority; county board; dissolve; when.

Whenever it shall have paid or provided for the payment of all of its outstanding obligations, and it shall appear to the board of trustees of an authority that the need for such authority no longer exists, then upon petition by the board of trustees to the county board of the county in which the authority is situated, and upon the production of satisfactory evidence in support of such petition, the county board shall enter an order declaring that the need for such authority no longer exists, and approving a plan for the winding up of the business of the authority, the payment or assumption of its obligations, and the transfer of its assets.

Source: Laws 1971, LB 54, § 45; R.S.1943, (1987), § 23-343.118.

23-35,119 Hospital authority; order of dissolution; effect.

If the county board shall enter an order, as provided in section 23-35,118, that the need for such authority no longer exists, except for the winding up of its affairs in accordance with the plan approved by the county board, its

authorities, powers and duties to transact business or to function shall cease to exist as of that date set forth in the order of the county board.

Source: Laws 1971, LB 54, § 46; R.S.1943, (1987), § 23-343.119.

23-35,120 Hospital authority; bonds; holders; contract with state; powers.

(1) The State of Nebraska covenants and agrees with the holders of bonds issued by an authority that the state will not limit or alter the rights vested by sections 23-3579 to 23-35,120 in an authority to acquire, maintain, construct, reconstruct, and operate hospitals; to establish and collect such rates, rentals, charges, and fees as may be convenient or necessary to produce sufficient revenue to meet the expense of maintenance and operation of such hospitals and to fulfill the terms of any agreements made with holders of bonds of the authority. The state will also not in any way impair the rights and remedies of the bondholders until the bonds together with interest thereon and with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The provisions of sections 23-3579 to 23-35,120 and of the proceedings authorizing bonds thereby shall constitute a contract with the holders of said bonds.

(2) Notwithstanding any other provision of the Hospital Authorities Act to the contrary, in addition to any other powers which an authority has, an authority may engage in the financing of any hospital or the refinancing of any indebtedness incurred to finance a hospital, whether or not incurred prior to or after March 27, 1979, by issuing its bonds pursuant to a plan of financing involving an acquisition or commitment to acquire or use any federally guaranteed security or securities and may enter into any agreement which it deems necessary or desirable in order to effectuate any such plan. For the purposes of this section, federally guaranteed security shall mean any direct obligation of the United States of America or any obligation the payment of principal of and interest on which are fully or partially guaranteed by the United States of America, whether or not secured by other collateral, and shall include, without limitation, any security guaranteed by the Government National Mortgage Association under section 306(g) of the National Housing Act, 12 U.S.C. 1721(g). The provisions of section 23-35,113, shall not apply in the case of any such financing or refinancing.

Source: Laws 1971, LB 54, § 47; Laws 1979, LB 441, § 1; R.S.1943, (1987), § 23-343.120.

ARTICLE 36

INDUSTRIAL SEWER CONSTRUCTION

Section

Section

23-3601 Act, how cited.

Sections 23-3601 to 23-3637 shall be known and may be cited as the County Industrial Sewer Construction Act.

Source: Laws 1994, LB 1139, § 1.

23-3602 Legislative findings.

The Legislature finds that:

(1) The ability of Nebraska to attract and retain large commercial or industrial businesses to the state is dependent to a large extent upon the presence of adequate and efficient infrastructure improvements, available for use at the time the business begins construction of new plant or facilities;

(2) The ability to construct the necessary infrastructure improvements and most particularly sewerage disposal systems and plant or plants depends upon the presence and willingness of an appropriate public entity to plan, develop, and finance the facilities;

(3) The distance of many large tracts of land appropriate for industrial development from nearby cities and the large cost for developing sewerage disposal systems and plant or plants often makes it impractical, infeasible, and unfair for the financing burdens to be borne by a single municipality;

(4) The benefits of new industrial and commercial businesses are generally spread throughout a regional area and it is fairer and more appropriate that the costs of providing sewerage disposal systems and plant or plants for such users should be shared more broadly through the same area;

(5) It is necessary to facilitate industrial and commercial development in certain areas of the state by providing the authority for county governments to plan, develop, finance, and construct sewerage disposal systems and plant or plants so that the costs and benefits of such development are more properly allocated;

(6) The development of sewerage disposal systems and plant or plants can inevitably lead to additional urbanization and residential development in areas surrounding industrial tracts which are beyond the current limits of authorized zoning control by municipalities;

(7) This urbanization beyond municipal control can lead to the distortion of logical, planned development patterns and the creation of new demands for county services and other infrastructure improvements which distort budget priorities and add additional pressures on scarce financial resources;

(8) It is appropriate to extend to neighboring municipalities that may, through future growth, assume the responsibility for the planning and zoning and ultimately the annexation of the area the additional authority to prevent additional residential development in the area by authorizing it to review and control the activity of the county in authorizing the use of the sewerage disposal system and plant or plants constructed under its authority for additional residential purposes; and

(9) Because of the primary role of municipalities in the development and construction of sewerage disposal systems and plant or plants under the state's current statutory scheme, it is appropriate to provide for the review of county disposal sewerage development plans by appropriate municipalities prior to the construction of such systems and plant or plants to foster cooperative arrangements and insure that appropriate municipal concerns about additional residential development impacts have been addressed by the county.

Source: Laws 1994, LB 1139, § 2.

23-3603 Terms, defined.

For purposes of the County Industrial Sewer Construction Act:

(1) County shall mean any county with a population in excess of one hundred thousand inhabitants according to the most recent federal decennial census and at least forty percent of the population residing within the corporate boundaries of cities of the first and second class located in the county; and

(2) Sewerage disposal system and plant or plants shall mean and include any system or works above or below ground which has for its purpose the removal, discharge, conduction, carrying, treatment, purification, or disposal of liquid and solid waste and night soil.

Source: Laws 1994, LB 1139, § 3.

23-3604 Sewerage disposal system and plant; authorized; county; powers; vote by city or village governing body; when required.

(1) Any county in this state may own, construct, equip, and operate a sewerage disposal system and plant or plants for the treatment, purification, and disposal, in a sanitary manner, of liquid and solid wastes, sewage, and night soil or extend or improve any existing sanitary sewer system for the purpose of meeting the future needs of planned commercial or industrial users. The authority granted to a county under the provisions of the County Industrial Sewer Construction Act shall extend to the acquisition, leasing, or contracting for the use of a sewerage disposal system and plant or plants, and the county shall exercise this authority in the same manner as provided in the act for the construction, installation, improvement, or extension of a sewerage disposal system and plant or plants. A county is authorized to contract for the performance of any act or function provided for in the act with regard to the construction, installation, improvement, or extension of a sewerage disposal system and plant or plants or for the acquisition, leasing, or contracting for the use of a sewerage disposal system and plant or plants, except for such acts or functions as are governmental in nature.

(2) No county shall exercise the authority granted by the act within the boundaries of any incorporated city or village or outside the boundaries of the county. When more than fifty percent of the proposed length of a sewerage disposal system project will be located within the area of a city or village's declared extraterritorial zoning jurisdiction, the authority granted by the act shall not be exercised by a county without prior approval of the proposed project by a vote of the governing body of the city or village.

(3) Any county may acquire by gift, grant, purchase, or condemnation the necessary lands for the purposes authorized by the act.

Source: Laws 1994, LB 1139, § 4.

23-3605 Proposed system; resolution of county board; contents; procedure; county board; duties.

At such time as the county board decides to construct or install a sewerage disposal system and plant or plants or decides to improve or extend an existing system, the county board shall formally adopt a resolution indicating its intent to proceed with such engineering studies and the development of such plans as are necessary to proceed with the development of the system. Such resolution shall specify the proposed location of the system and the area or areas which it will serve. The resolution shall specify what particular future needs of planned commercial or industrial users will be served by the development of the proposed system. Prior to adopting the resolution, the county board may conduct feasibility studies on sewerage system development and receive preliminary cost estimates on such development. At the discretion of the county board the resolution may, if such information is available, indicate the estimated cost of the development of the proposed sewerage disposal system and plant or plants and the manner in which such system and plants will be financed. Following the adoption of the resolution, the county board shall require that appropriate engineering studies be conducted and that plans and specifications be prepared of the proposed sewerage disposal system and plant or plants or improvement or extension of the existing system.

Source: Laws 1994, LB 1139, § 5.

23-3606 Adoption of resolution; notices required.

Not later than seven days after the adoption of the resolution by the county board regarding a sewerage disposal system and plant or plants pursuant to section 23-3605, the county board shall:

(1) Send formal notice of such resolution to the clerk of each city and village located within the county and inform such clerks of its intent to establish the boundaries of each city's or village's area of future growth and development within the boundaries of the county; and

(2) Send formal notice of such resolution to any city or other political subdivision into whose sewerage disposal system and plant or plants the proposed county sewerage system will or may connect.

Source: Laws 1994, LB 1139, § 6.

23-3607 City or village; proposed boundaries; file map.

Within forty-five days after the receipt of the notice provided for in section 23-3606, each city or village shall file with the county clerk a map clearly delineating the proposed boundaries of the area of future growth and development of the city or village within the county as developed and approved by the governing body of the city or village.

Source: Laws 1994, LB 1139, § 7.

23-3608 City or village; proposed boundaries; contents.

In defining the proposed boundaries of its area of future growth and development, each city or village shall include at least the area over which it formally exercises jurisdiction for purposes of zoning and platting. Each city or village may include in its proposed boundaries of the area of future growth and development such unincorporated lands within the county not more than five miles beyond its corporate limits which the city or village reasonably anticipates will in the future come within the jurisdiction of the city or village for purposes of zoning and platting as a result of long-range future growth. The boundaries of the area of future growth and development proposed by each city or village shall be based upon documented population and economic growth trends and projected patterns of land development and infrastructure improvement. The area of future growth and development of a city or village shall be delineated in conformity with the comprehensive development plan of the city or village or in conformance with the goals and standards in such plan. The governing body of the city or village shall not take formal action on the delineation of its area of future growth and development until it has received a recommendation thereon from its planning commission.

Source: Laws 1994, LB 1139, § 8.

23-3609 Maps; review by county board; notice.

The county board shall review the maps delineating the areas of future growth and development received from each city and village and shall identify those portions of the county which two or more cities or villages claim as being within each of their respective areas of future growth and development. Within fifteen days after the date upon which the last map was filed pursuant to section 23-3607, the county board shall notify the cities or villages that are claiming overlapping portions of areas of future growth and development of the territory

which is the subject of dispute and of the other cities or villages claiming the same territory within their areas of future growth and development. The notice shall state the location, date, and time when the county board will hold a public hearing for all interested parties on the question of which city or village should properly be permitted to include the disputed territory within its defined area of future growth and development. Such notice shall be delivered at least twenty days prior to the public hearing

Source: Laws 1994, LB 1139, § 9.

23-3610 Public hearing; adoption of map; disputed area; county board; duties.

(1) The county board shall hold a public hearing on each disputed area pursuant to such notice as set out in section 23-3609. Within fifteen days after the completion of such public hearings, the county board shall formally adopt a map designating and delineating the boundaries of the area of future growth and development of each city or village within the county.

(2) Over all territory regarding which there is no dispute between any cities or villages as to inclusion in their respective areas of future growth and development, the county board shall accept the recommended delineations of the cities and villages and incorporate them without amendment into its formal map.

(3) When any cities or villages involved in a dispute over the inclusion of territory within their respective areas of future growth and development reach an agreement on the allocation of the disputed territory and inform the county board of such agreement prior to the board's final action to adopt a formal map, the county board shall accept the agreement on the allocation and incorporate the agreed-upon delineation without amendment into its formal map.

(4) In determining any disputes on the allocation of territory not otherwise resolved by agreement between disputing cities and villages and in making its formal delineations with regard to such territory, the county board shall base its decision on the relative likelihood of the disputed area coming within the jurisdiction of the cities or villages for zoning or platting purposes based on (a) growth and land development patterns and (b) documented population and economic growth trends. The county board shall place the disputed area within the area of future growth and development of the city or village which would, based upon such factors, be the most likely city or village to first assume jurisdiction over such territory for zoning or platting purposes.

Source: Laws 1994, LB 1139, § 10.

23-3611 Map; change or amendment; procedure.

(1) After the adoption of the map designating and delineating areas of future growth and development of the cities and villages in the county by the county board as provided in section 23-3610, the map shall not be changed or amended except as provided in subsections (2) and (3) of this section.

(2) When the county board is notified that the area over which a city or village formally exercises jurisdiction for purposes of zoning or platting has been extended so as to include a portion of the area of future growth and development of another city or village, the board shall promptly amend the

map so as to place the territory that is in the jurisdiction of the city or village for zoning or platting purposes within the area of future growth and development of the same city or village.

(3) Upon the request of a city or village which recites that changes in growth and development patterns or population and economic trends have necessitated changes in the map of areas of growth and development, the county board shall review the territories specified in the request as requiring reallocation and make such changes as it deems warranted. The review shall be carried out in the same manner as prescribed in sections 23-3609 and 23-3610 for dealing with disputed territory, and any changes made by the county board shall be based on the same criteria as used by the board in making its original determination.

Source: Laws 1994, LB 1139, § 11.

23-3612 Notice to city or village; contents.

At such time as the county board determines that it is prepared to proceed with orders for the development of the sewerage disposal system and plant or plants proposed in the resolution under section 23-3605, it shall formally give notice to the city or village, within whose area of future growth and development the sewerage disposal system and plant or plants will be located, of its intent to proceed. In the event that the sewerage disposal system and plant or plants project will be located within the area of future growth and development of more than one city or village, the county shall give notice to that city or village within whose area more than fifty percent of the sewerage disposal system and plant or plants, as determined by linear measure, will be located. With the notice the county shall provide the city or village with copies of all relevant documents and information regarding the sewerage disposal system and plant or plants and the plans for its development, including any estimates of cost and proposed plans for financing the project.

Source: Laws 1994, LB 1139, § 12.

23-3613 City or village; schedule public hearing; presentation by county.

Not less than twenty days after receiving the notice provided for in section 23-3612, the city or village governing body shall schedule a public hearing for consideration of the county proposal for development of the sewerage disposal system and plant or plants. At such hearing, the county shall present its plans for the proposed development for the sewerage disposal system and plant or plants and the governing body of the city or village shall receive public comment on the matter.

Source: Laws 1994, LB 1139, § 13.

23-3614 City or village; vote on proposal; criteria.

Within fifteen days after the public hearing under section 23-3613, the city or village governing body shall vote in open public session on whether or not to authorize the county to proceed with the development of the sewerage disposal system and plant or plants. The governing body shall base its decision on the following criteria:

(1) Whether the development of the proposed sewerage disposal system and plant or plants is consistent with the sewerage system of the city or village and the comprehensive development plan of the county;

(2) Whether the proposed sewerage disposal system and plant or plants will enhance the possibility for industrial or commercial development in the area it will serve;

(3) Whether the proposed sewerage disposal system and plant or plants will encourage additional residential development in the area it will serve;

(4) Whether the county has developed appropriate plans and procedures to address the possibility of future residential development in the area and to ensure that such development proceeds in a fashion consistent with the standards established by the city or village for development within its area of jurisdiction for platting and zoning purposes;

(5) Whether the county has proposed measures for cooperative action between the city or village and the county to address matters of concern with regard to the sewerage disposal system and plant or plants, its development, or related development issues;

(6) Whether the city or village is willing to proceed with the development of the proposed sewerage disposal system and plant or plants as its own project or in cooperation with the county;

(7) Whether the land development projects occurring as a result of the development of the sewerage disposal system and plant or plants will require additional infrastructure expenditures to support the proposed industrial or commercial development and the impact of such required infrastructure expenditures upon then current city or village and county capital improvement plans; and

(8) Whether the projected commercial or industrial development occurring as a result of the development of the sewerage disposal system and plant or plants will have a positive or adverse impact upon the economy of the city or village and the county.

Unless a number of members of the city or village governing body equal to two-thirds or more of its elected members vote against authorizing the county to proceed with the development of the sewerage disposal system and plant or plants, the county may proceed with the development of the system at the discretion of the county board.

Source: Laws 1994, LB 1139, § 14.

23-3615 Order for installation, improvement, or extension; bids.

Whenever the county board has ordered the installation of a sewerage disposal system and plant or plants or the improvement or extension of an existing system, the fact that such order was issued shall be recited in the official minutes of the county board. Upon approval of plans for such installation, improvement, or extension, the county board shall advertise for sealed bids for the construction of the system, improvement, or extension once a week for three weeks in a legal newspaper published in or of general circulation within the county, and the contract shall be awarded to the lowest responsible bidder.

Source: Laws 1994, LB 1139, § 15.

23-3616 Sewer tax levy; authorized; use; vote; when required.

For the purpose of owning, operating, constructing, maintaining, and equipping a sewerage disposal system and plant or plants as authorized by the County Industrial Sewer Construction Act or improving or extending an existing system, a county may make a special levy known as the sewer tax levy not to exceed three and five-tenths cents on each one hundred dollars upon the actual value of all the taxable property within any such county subject to section 77-3443. Any levy exceeding such amount for the purposes of such act shall be submitted for approval to the registered voters of the county at a general election or special election called for such purpose. The proceeds of such levy shall be used only for the purposes enumerated in this section and for no other purpose.

Source: Laws 1994, LB 1139, § 16; Laws 1996, LB 299, § 18; Laws 1996, LB 1114, § 51.

23-3617 Revenue bonds; authorized.

A county may issue revenue bonds for the purpose of owning, operating, constructing, and equipping a sewerage disposal system and plant or plants or improving or extending an existing system. Such revenue bonds shall not impose any general liability upon the county but shall be secured only by the revenue as provided from such sewerage disposal system and plant or plants. Such revenue bonds shall be sold for not less than par value and bear interest at a rate set by the county board. The amount of such revenue bonds, either issued or outstanding, shall not be included in computing the maximum amount of bonds which the county may be authorized to issue under any statute of this state.

Source: Laws 1994, LB 1139, § 17.

23-3618 County board; adopt rules and regulations; connection to system; penalty; usage fees; permit; fee.

(1) The county board may adopt and promulgate rules and regulations governing the use, operation, and control of such sewerage disposal system and plant or plants, including the authority to compel all proper connections and to provide a penalty not to exceed one hundred dollars for any obstruction or injury to any sewer or part thereof or for failure to comply with the rules and regulations adopted and promulgated. If, after ten days' notice by certified mail or publication in a newspaper of general circulation, a property owner fails to make such connections and comply with such rules and regulations as may be ordered in accordance with this section, the county board may order such connection to be made and assess the cost of the connection against the property benefited in the same manner as special taxes are levied for other purposes.

(2) The county board may establish usage fees to be paid to it for the use of such sewerage disposal system and plant or plants by each person, firm, or corporation whose premises are served thereby. The county board may contract with another party for the billing and collection of such usage fees. If the usage fee so established is not paid when due, such sum may be recovered by the county in a civil action or it may be certified to the county assessor and assessed against the premises served and collected or returned in the same manner as other county taxes are certified, assessed, collected, and returned.

(3) The county board shall require the issuance of a permit for any property owner to connect with any sewer and the payment of a fee for the permit and connection as determined by the county board, which fee shall be paid prior to issuance of any such permit. The county board shall also require the issuance of a permit to connect with any sewer and payment of a connection fee by any developer payable at the time of filing a plat for the development, which fee shall be paid prior to issuance of such permit.

Source: Laws 1994, LB 1139, § 18.

23-3619 Revenue bonds; how paid; sinking fund; rights of holders.

(1) Revenue bonds issued as provided in section 23-3617 shall not be a general obligation of the county but shall be paid only out of the revenue received from the usage fees as provided in section 23-3618.

(2) If a usage fee is charged as a part of the revenue as provided in subsection (1) of this section, a sufficient portion shall be set aside as a sinking fund for the payment of the interest on such revenue bonds and the principal at maturity.

(3) The usage fee for the service of the sewerage disposal system and plant or plants as provided in subsection (1) of this section shall be sufficient, at all times, to pay the cost of operation and maintenance of such system, to pay the principal and interest upon all revenue bonds issued pursuant to section 23-3617, and to carry out any covenants that may be provided in the resolutions authorizing the issuance of any such bonds.

(4) The holders of any of the revenue bonds or any of the coupons of any revenue bonds issued under such section, in any civil action, mandamus, or other proceeding, may enforce and compel the performance of all duties required by this section and the covenants made by the county board in the resolution providing for the issuance of such bonds, including the making and collecting of sufficient rates or charges for the specified purposes and for the proper application of the income therefrom.

Source: Laws 1994, LB 1139, § 19.

23-3620 General obligation bonds; issuance.

For the purpose of owning, operating, constructing, and equipping any sewerage disposal system and plant or plants or improving or extending any existing system or for the purposes stated in the County Industrial Sewer Construction Act, any county may issue and sell the general obligation bonds of the county upon compliance with the provisions of section 23-3621. Such bonds shall not be sold or exchanged for less than the par value and shall bear interest which shall be payable annually or semiannually. The county board shall have the power to determine the denominations of such bonds and the date, time, and manner of the payment. The amount of such general obligation bonds, either issued or outstanding, shall not be included in the maximum amount of bonds which any such county may be authorized to issue and sell under any statutes of this state.

Source: Laws 1994, LB 1139, § 20.

23-3621 Bonds; resolution required; vote; when required.

Revenue bonds authorized by section 23-3617 may be issued by resolution duly passed by the governing body of the county without any other authority.

General obligation bonds authorized by section 23-3620 may be issued by resolution duly adopted by the county board without any other authority, unless the proposed sewer tax levy authorized by section 23-3616 exceeds three and five-tenths cents on each one hundred dollars of actual value, in which case the bonds may be issued only after (1) the question of their issuance has been submitted to the registered voters of the county at a general or special election, (2) three weeks' notice thereof has been published in a legal newspaper published in or of general circulation in the county, and (3) more than a majority of the registered voters voting at the election have voted in favor of the issuance of the bond.

Source: Laws 1994, LB 1139, § 21.

23-3622 Rental or use charge; authorized; use.

(1) The county board, in addition to other sources of revenue available to the county, may by resolution set up a rental or use charge, to be collected from users of any sewerage disposal system and plant or plants, and provide methods for collection of the rental or use charge. The charges shall be charged to the real property served by the sewerage disposal system, shall be a lien upon the real property served, and may be collected either from the owner or the person, firm, or corporation requesting the service.

(2) All money raised from the charges referred to in subsection (1) of this section shall be used for maintenance or operation of the existing sewerage disposal system and plant or plants, for payment of principal and interest on bonds issued, or to create a reserve fund for the purpose of future maintenance or construction of a new sewerage disposal system and plant or plants for the county. Any funds raised from such charge shall be placed in a separate fund and shall not be used for any other purpose or diverted to any other fund except as provided in section 23-3625.

Source: Laws 1994, LB 1139, § 22.

23-3623 Warrants; registration; sewerage fund.

For the purpose of paying the cost of construction of such sewerage disposal system and plant or plants, the county board may issue warrants in amounts not to exceed the total sum of the sewer tax levy provided in section 23-3616, which warrants shall bear interest at such rate as the county board orders. When there are no funds immediately available for the payment of the warrants, they shall be registered in the manner provided for the registration of other warrants and called and paid whenever there are funds available for the purpose in the manner provided for the calling and paying of other warrants. For the purpose of paying the warrants and the interest thereon from the time of their registration until paid, the sewer tax levy provided in such section shall be kept as it is paid and collected in a fund to be designated and known as the sewerage fund into which all money levied for such improvements shall be paid as collected and out of which all warrants issued for such purposes shall be paid.

Source: Laws 1994, LB 1139, § 23.

23-3624 Warrants; issuance for partial and final payments; redemption; interest.

For the purpose of making partial payments as the work progresses, warrants may be issued by the county board upon certificates of the engineer in charge showing the amount of work completed and materials necessarily purchased and delivered for the orderly and proper continuation of the project in a total amount not to exceed ninety-five percent of the cost. Upon completion and acceptance of the work, the county board shall issue a final warrant for the balance of the amount due the contractor. The county shall pay to the contractor interest at the rate of seven percent per annum on the amounts due on partial and final payments beginning forty-five days after the certification of the amounts due by the engineer in charge and approval of the county board and running until the date that the warrant is tendered to the contractor. The warrants shall be redeemed and paid out of the proceeds received from the sewer tax levy levied pursuant to section 23-3616 or usage fees adopted pursuant to section 23-3618 or out of the proceeds of the bonds or warrants issued. The warrants shall draw interest as provided in the warrants from the date of registration until paid.

Source: Laws 1994, LB 1139, § 24.

23-3625 Sinking fund; transfer of excess by county board.

All the sewer taxes, usage fees, and other revenue provided for in the County Industrial Sewer Construction Act shall, when levied and collected, constitute a sinking fund for the purpose of paying the cost of the improvements with allowable interest and shall be solely and strictly applied to such purpose to the extent required. Any excess may be by the county board, after fully discharging the purposes for which levied, transferred to such other fund or funds as the county board may deem advisable.

Source: Laws 1994, LB 1139, § 25.

23-3626 Annexation of sewerage disposal system and plant by city or village; powers and duties of city or village.

Whenever any city or village annexes all of the land encompassing a sewerage disposal system and plant or plants constructed, improved, or extended by a county pursuant to the County Industrial Sewer Construction Act, the annexing city or village shall succeed to all the property and property rights of every kind, contracts, obligations, and choses in action of every kind, held by or belonging to the county with regard to the sewerage disposal system and plant or plants, and the city or village shall be liable for and recognize, assume, and carry out all valid contracts and obligations of the county with regard to the sewerage system and plant or plants. All taxes, assessments, claims, and demands of every kind due or owing to the county with regard to the sewerage disposal system and plant or plants shall be paid to and collected by the city or village. Any special assessments which the county was authorized to levy, assess, relevy, or reassess, but which were not levied, assessed, relevied, or reassessed at the time of the annexation for improvements made by the county pursuant to such act, may be levied, assessed, relevied, or reassessed by the annexing city or village to the same extent as the county may have levied or assessed prior to the annexation.

Source: Laws 1994, LB 1139, § 26.

23-3627 Annexation of sewerage disposal system and plant by city or village; when effective; duties of county board.

The county board shall, within thirty days after the effective date of the annexation, submit to the annexing city or village a written accounting of all assets and liabilities, contingent or fixed, of the county with regard to the sewerage disposal system and plant or plants. The annexation of the sewerage disposal system and plant or plants shall be effective thirty days after the effective date of the ordinance annexing the territory unless some later date is specified in the ordinance and is agreed to by the annexing city or village and the county. If the validity of the ordinance annexing the territory is challenged by a proceeding in a court of competent jurisdiction, the effective date of the annexation shall be thirty days after the final determination of the validity of the ordinance. The county shall continue in possession of the sewerage disposal system and plant or plants and shall continue to conduct all affairs with regard to the sewerage disposal system and plant or plants until the effective date of the annexation.

Source: Laws 1994, LB 1139, § 27.

23-3628 Partial annexation by city or village; agreement with county; approval by district court; adjustment; decree.

If only a portion of the territory encompassing a sewerage disposal system and plant or plants constructed, improved, or extended by a county pursuant to the County Industrial Sewer Construction Act is annexed by a city or village, the county acting through the county board and the city or village acting through its governing body may agree between themselves as to the equitable division of the assets, liabilities, maintenance, or other obligations of the county so as to exclude the jurisdiction of the county over the portion of the system within the boundaries of the city or village, may agree to the merger of the entire system with the city or village despite the fact that some portion of the system is not within the boundaries of the city or village, or may agree that the county shall continue to own and operate the entire system despite the annexation by the city or village of a portion of the system. If a merger is agreed upon, the city or village shall have all the rights, privileges, duties, and obligations as provided in sections 23-3626 and 23-3627 when the city or village annexes the entire territory encompassing the sewerage disposal system and plant or plants and the county shall be relieved of all further duties and liabilities as provided in the agreement between the city or village and the county. No agreement between the county and the city or village shall be effective until submitted to and approved by the district court of the county in which the system or plant is located. No agreement shall be approved which may prejudice the rights of any bondholder or creditor of the county with regard to the sewerage disposal system and plant or plants. The court may authorize or direct amendments to the agreement before approving the same. If the county and the city or village do not agree upon the proper adjustment of all matters growing out of the annexation of the sewerage disposal system and plant or plants, the annexing city or village or the county may apply to the district court for an adjustment of all matters growing out of or in any way connected with the annexation of a portion of the sewerage disposal system and plant or plants and, after a hearing thereon, the court may enter an order or decree fixing the rights, duties, and obligations of the parties. Only the county and the city or village shall be necessary parties to such an action. The decree,

when entered, shall be binding on all parties the same as though the parties had voluntarily agreed thereto.

Source: Laws 1994, LB 1139, § 28.

23-3629 Connection of lot or structure; when allowed.

No county shall permit the connection of any lot or any structure used or to be used for any residential purpose to a sewerage disposal system and plant or plants constructed pursuant to the County Industrial Sewer Construction Act unless (1) such lot was platted and recorded prior to March 1, 1994, or such structure is or will be constructed on a lot platted and recorded prior to March 1, 1994, or (2) such connection is authorized by the appropriate city or village as provided in the act.

Source: Laws 1994, LB 1139, § 29.

23-3630 Owners of real property; subdivide or plat property; connection to system or plant; duty to inform; failure to inform; effect; county board; duties.

After the county board formally adopts its resolution of intent to develop a sewerage disposal system and plant or plants pursuant to section 23-3605, any owner of real property seeking approval from the county to subdivide, plat, or lay out the real property in building lots, any of which are intended for use in whole or in part for the construction of structures to be used for any residential purpose, shall at the time of application for approval inform the county if the owner intends to seek approval for connection of such lots or any proposed structures on them to a sewerage disposal system and plant or plants constructed under the County Industrial Sewer Construction Act. Any owner failing to inform the county of his or her intent to seek approval for connection to the sewerage disposal system or plant or plants at the time of application for a plat shall be barred from applying for a connection to the sewerage disposal system and plant or plants for any lot or any structure used for any residential purpose on such platted lots for a period of three years from the date such plat was finally approved and recorded. Such bar shall extend to any successor in interest of such owner in the platted lots during the same period of time. During the period between the date of adoption of the county board's resolution of intent to develop a sewerage disposal system and plant or plants and the date upon which the county board formally adopts a map designating and delineating the area of future growth and development of each city and village in the county pursuant to section 23-3610, the county board shall not approve any application for the platting of any territory whose owner has indicated an intent to seek approval for the eventual connection to the sewerage disposal system and plant or plants of any lots or any structures placed on such lots to be used for residential purposes. Such applications shall be treated as if filed on the date upon which the county board formally adopts a map designating and delineating the area of future growth and development of each city and village in the county pursuant to section 23-3610.

Source: Laws 1994, LB 1139, § 30.

23-3631 Application to subdivide or plat; referral to urbanizing area planning commission; when.

After the county board formally adopts a map designating and delineating the area of future growth and development of each city and village in the county

pursuant to section 23-3610, the county board shall refer to the urbanizing area planning commission of the county any application by an owner of real property seeking approval from the county to subdivide, plat, or lay out the real property in building lots, any of which are intended for use in whole or in part for the construction of structures to be used for residential purposes, for which the owner indicates an intent to seek connection to the sewerage disposal system and plant or plants of the county constructed pursuant to the County Industrial Sewer Construction Act.

Source: Laws 1994, LB 1139, § 31.

23-3632 Urbanizing area planning commission; members; terms; vacancies.

The urbanizing area planning commission shall consist of six members. Three members shall be chosen by the county board from the membership of the county planning commission. Three members shall be chosen by the mayor with the approval of the governing body of the city or village from the regular membership of the planning commission of the city or village within whose area of future growth and development is located the territory which is the subject of the application. In the event that the territory which is the subject of the application is located in more than one area of future growth and development, the members of the urbanizing area planning commission shall be chosen from the city or village within whose area of future or growth and development more than fifty percent of the territory which is the subject of the plat, as measured by area, is located. The members of the urbanizing area planning commission shall serve without compensation for two-year terms. Initial appointments shall be made within thirty days after the date upon which the county board formally adopts a map designating and delineating the area of future growth and development of each city and village in the county pursuant to section 23-3610. Members shall hold office until their successors are appointed and qualified. Vacancies shall be filled by appointment by the person or body which made the original designation, and the vacancy shall be filled in the same manner as the original appointment.

Source: Laws 1994, LB 1139, § 32.

23-3633 Urbanizing area planning commission; jurisdiction; powers and duties.

After the county board formally adopts a map designating and delineating the area of future growth and development of each city and village pursuant to section 23-3610, the urbanizing area planning commission shall assume jurisdiction of any matter within the jurisdiction of a county planning commission under sections 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376 which arises from the application of an owner of real property seeking approval from the county to subdivide, plat, or lay out the real property in building lots, any of which are intended for use in whole or in part for the construction of structures to be used for any residential purposes, for which the owner has indicated his or her intent to seek approval for the eventual connection to the county sewerage disposal system and plant or plants developed under the provisions of the County Industrial Sewer Construction Act. The jurisdiction of the urbanizing area planning commission is restricted to such portions of the areas of future growth and development of the cities and villages as are outside of their areas of formal jurisdiction for zoning and

platting purposes. All powers, duties, responsibilities, and functions of the county planning commission shall be assumed and exercised by the urbanizing area planning commission with regard to matters within its jurisdiction as defined by the act. Actions of the urbanizing area planning commission taken with regard to matters arising within the area of its jurisdiction shall be treated for all purposes as if made by the county planning commission.

Source: Laws 1994, LB 1139, § 33.

23-3634 Urbanizing area planning commission; county provide documentation or materials; when.

In all matters subject to the jurisdiction of the urbanizing area planning commission, upon the request of the city or village, the county shall make available to the city or village within whose area of future growth and development the matter arises any documentation or materials with regard to the matter in the possession of the county.

Source: Laws 1994, LB 1139, § 34.

23-3635 Application for connection; county clerk; duties; public hearing; notice; approval by city or village; criteria.

When the county receives an application from an owner of a lot proposed for residential use or a structure used for any residential purpose requesting connection of the lot or structure to a sewerage disposal system and plant or plants constructed pursuant to the County Industrial Sewer Construction Act, the county clerk shall, within five days after receipt of such application, provide a copy of such application to the city or village within whose area of future growth and development the lot or structure is located. The city or village governing body shall set a date for a public hearing on the application not sooner than fifteen days after receipt of the application. The owner of the lot or structure shall be notified by first-class United States mail of the date of the hearing. Within fourteen days after the hearing, the governing body of the city or village shall vote in open public session on whether to recommend that the county approve or disapprove the application. The county shall not authorize the connection of the lot or structure to the county sewerage disposal system and plant or plants without a recommendation of approval by a majority of the elected members of the governing body of the city or village. The determination by the city or village governing body as to whether or not to recommend approval of the application for connection to the sewerage disposal system and plant or plants of the county shall be based on the following criteria:

(1) Whether the subdivision, of which the lot or structure for which the connection is sought is part, is or will be developed in a location and in a manner in conformity with the comprehensive development plan of the city or village and the county;

(2) Whether the county has developed appropriate plans and procedures to ensure that the development of the subdivision proceeds in a fashion consistent with the standards established by the city or village for development within its area of jurisdiction for platting and zoning purposes;

(3) Whether the subdivision, of which the lot or structure for which the connection is sought is part, has been developed in a manner consistent with properly adopted county standards and whether the plans for the proposed

structure or the structure, if built, are in accordance with appropriate county building codes;

(4) Whether the sewerage disposal system and plant or plants has sufficient capacity to serve the applicant for connection in light of current and projected future needs for commercial and industrial users;

(5) Whether the additional connection to the sewerage disposal system and plant or plants will impact positively or negatively on the financial status of the system, including its debt structure, cash flow, and operational and maintenance financing requirements;

(6) Whether the use of septic tanks or any other practical alternative form of sewerage disposal in the subdivision or the lot is feasible or will pose present or future threats to public health and safety and the purity of local water supplies used for human consumption or recreational purposes;

(7) Whether the county has developed or adopted appropriate and adequate rules and regulations governing the sewerage disposal system and plant or plants and procedures to enforce the same so as to ensure the safe, sanitary, and environmentally sound connection of lots or structures to the county sewerage disposal system and plant or plants and whether it has developed procedures to maintain such standards during its operations; and

(8) Whether all appropriate state and federal statutes, rules, and regulations have been complied with prior to the application for the connection to the county sewerage disposal system and plant or plants.

Source: Laws 1994, LB 1139, § 35.

23-3636 County board; prepare statement; contents; approval; provide to applicants; signed acknowledgment.

Prior to the date upon which the county adopts its resolution of intent to develop a sewerage disposal system and plant or plants pursuant to section 23-3605, the county board shall cause to be prepared a brief statement outlining the procedures set forth in the County Industrial Sewer Construction Act and the methods by which the county will exercise its authority to enforce the procedures so as to fully inform an owner of real property who may seek to plat such property for the eventual construction thereon of structures to be used for residential purposes and who may apply for connection of such lots or structures to the proposed county sewerage disposal system and plant or plants. At the time of the adoption of the resolution of intent pursuant to such section, the county board shall consider and approve the statement. On and after the date of such approval, the county board shall instruct the appropriate county official to inform all applicants to the county for the approval of a plat of the provisions of the act by providing them with a copy of the statement. The county official providing the statement shall obtain a signed acknowledgment from the applicant that he or she has received a copy of such statement. No application for a plat shall be accepted until the appropriate county official has received a copy of such signed acknowledgment.

Source: Laws 1994, LB 1139, § 36.

23-3637 Joint action agreements; terms and conditions.

The county and any city may enter into any agreement for joint action with regard to the planning, construction, management, operation, or financing of a

sewerage disposal system and plant or plants consistent with the authority of the county as provided in the County Industrial Sewer Construction Act and consistent with the authority of the city and county under the Interlocal Cooperation Act or the Joint Public Agency Act. The county may enter into an agreement with any city for the sale to the city of all or any portion of a sewerage disposal system and plant or plants developed by the county under the County Industrial Sewer Construction Act upon such terms and conditions as to which the city and county may formally agree. Any agreement entered into by a city and county pursuant to this section shall be consistent with and conditioned upon the rights of any third party with a direct financial interest in the sewerage disposal system and plant or plants.

Source: Laws 1994, LB 1139, § 37; Laws 1999, LB 87, § 67.

Cross References

Interlocal Cooperation Act, see section 13–801.
Joint Public Agency Act, see section 13–2501.